

1 **MINUTES OF THE REGULAR MEETING** of the City Council of the City of Orange City held on
2 Tuesday, July 8, 2008 at 7:00 p.m. in Council Chambers, 201 N. Holly Avenue, Orange City, Florida.

3
4 **CALL TO ORDER**

5
6 The Meeting was called to order at 7:00 p.m. by Mayor Strickland and roll call was taken.

7
8 **ROLL CALL**

9
10 **PRESENT:** Mayor Harley Strickland; Vice Mayor Jeff Allebach; Council Members; Tom Laputka,
11 Tom Abraham, Don Sherrill, Donald Sandford, Jim Mahoney; City Attorney William
12 Reischmann; City Manager John McCue; City Clerk Deborah Renner

13
14 **INVOCATION**

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

17
18 **1. PRESENTATIONS:** Hurricane Preparedness – Randall Brown

19
20 Randall Brown, Florida Department of Financial Services, came forward and gave a presentation on
21 hurricane preparedness. He detailed the things that should be considered before and after a hurricane.
22 Mr. Brown discussed the importance of protecting important papers and making sure that your insurance
23 coverage is up to date and that all the information needed to file a claim is readily available.

24
25 **2. CITIZENS COMMENTS:**

26
27 Henry Durica, 1310 E. Lansdowne Ave., came forward to talk about the City's solid waste service. Mr.
28 Durica asked where the interest on the prepaid fee amounts goes. Christine Davis, Finance Director,
29 responded that it is placed in the solid waste fund and is tracked in the financial statements. Ms. Davis
30 noted that, currently, the City is subsidizing \$45,000 of the fund. Mr. Durica asked why the interest is
31 not returned to the citizens. Ms. Davis responded that in an effort to keep costs down, the previous
32 Council had chosen to subsidize the assessment. In light of this subsidy, there is no excess in the fund.
33 Mr. Durica noted that residents of the City of DeBary pay only \$169 per year. He said that when the
34 garbage service is prepaid, the interest goes into a "slush fund." Mr. Durica said that the average
35 household income in Volusia County is \$26,000 and that this should have been a consideration before a
36 rate increase was imposed.

37
38 Alexandra Burton, Orange City, came forward and reported that there is a "growing problem" of
39 abandoned shopping carts around the City. Ms. Burton noted that progress has been made in cleaning
40 up the City and asked if something could be done because it is an "eyesore." Ms. Burton suggested
41 asking the merchants to post signage that request that shopping carts not be removed from the premises.

42
43 At the request of Mayor Strickland, the order of the agenda was changed to present the City Manager's
44 and Mayor's Reports at this time.

45
46 **8. REPORTS:**

47

1 A. City Manager
2

3 Mr. McCue reported on the City's issues with Tel-Connect, the "phone sweepstakes" business located
4 on Graves Avenue. He said the City initiated and won a code enforcement action against Tel-Connect
5 because they misrepresented the business activities taking place there. He noted that they are appealing
6 the Special Master's ruling. Mr. McCue said that ligation could be costly and there is no guarantee that
7 the City would be successful. He expressed his confidence that the City would prevail on the appeal and
8 that Tel-Connect would then be required to apply for a conditional use permit in order to resume
9 operations. Mr. McCue noted that even though it is common knowledge that gambling is taking place
10 there, the City still cannot define it as such. He observed that these types of operations are targeting the
11 small communities and stated, "I would really hate to see Orange City be the precedent-setting decision
12 in a legal battle which reaffirms their land use rights statewide." Mr. McCue advised that litigation
13 would likely cost in excess of \$20,000.
14

15 Mr. Reischmann advised that Robin Drage, from his law firm, represented the City in the code
16 enforcement case against Tel-Connect. Mr. Reischmann described the operations inside the Tel-
17 Connect facility. He said the business is represented as a "phone card sweepstakes" where phone cards
18 are purchased and can be used to win prizes and cash on computers located inside their facility.
19

20 Mr. Reischmann said that as recently as yesterday, he was told by the Volusia County State Attorney's
21 Office that they would not pursue criminal charges against Tel-Connect. Since a criminal case was not
22 an option, staff initiated a code enforcement action against the company based on the fact that they
23 misrepresented their operation to the City and were operating a business that was not a permitted use in
24 that zoning district. The Special Master presiding over the code enforcement hearing advised Tel-
25 Connect that they could resubmit an application for a business tax receipt, apply for a conditional use
26 permit, or close the business within a defined amount of time or be fined \$250 a day. Tel-Connect
27 chose to appeal the decision. Mr. Reischmann explained that the City is "about to go down a path, that
28 we think we will prevail on, but that will incur certain expenses."
29

30 Ms. Drage came forward and discussed the legal filings associated with the case. Mr. Reischmann said
31 that Tel-Connect did not follow the proper procedure to appeal the ruling of the special magistrate. He
32 further discussed the technicalities of the legal proceedings involved in the case. Mr. Reischmann
33 advised that staff is seeking Council authorization for the necessary expenditures to move ahead with
34 this matter.
35

36 Ms. Drage advised that Tel-Connect also filed a claim for attorney fees. She was not of the opinion that
37 the claim is appropriate, however, it must be addressed by the City. Mr. Reischmann expressed his
38 confidence that they would not be successful in this action. Ms. Drage advised that if the City wins the
39 appeal, Tel-Connect could apply for a conditional use and the City would not have a legal basis to deny
40 the request, unless the City attempted to establish that it is an illegal gambling operation. Mr.
41 Reischmann and Ms. Drage noted that would be a very expensive undertaking. Mr. Reischmann
42 discussed the technicalities involved in this legal pursuit.
43

44 Mayor Strickland said that he met representatives of the company recently and that they tried to
45 convince him of the "worthiness of their endeavor." The Mayor noted that the Corporation had donated
46 \$20,000 towards the City's new V.A. Clinic. He said that he was told they had hired legal experts and
47 are currently operating in the United States and Canada. Mayor Strickland said that Tel-Connect's legal
48 team has done extensive research to find loopholes which will allow them to continue to operate. He

1 said that the corporation is huge and operates under a variety of different names. The Mayor expressed
2 his concern regarding the City's financial resources if it engages in a long legal battle with Tel-Connect.
3 He said that such an action could "break the City." In conclusion, the Mayor stated, "Gambling is
4 gambling, but as far as our putting a lot of money into trying to deal with that—with this kind of a
5 corporation, I just have a lot of concerns about that."
6

7 Council Member Laputka commented that he attended the code enforcement hearing and asked whether
8 the City was required to fight the appeal. Mr. Reischmann detailed the City's options as follows: the
9 City could fight the appeal and win; ignore the action and most likely the court would rule in favor of
10 Tel-Connect, perhaps even to the extent of awarding attorney's fees; or the City could work with the
11 legal representatives of Tel-Connect to find a middle ground.
12

13 Mr. Reischmann said that Tel-Connect was the subject of an Attorney General opinion regarding
14 whether the operation is, indeed, gambling. He read an excerpt of the opinion, "If the telephone game
15 does contain an element of chance inherent in the machine which determines the outcome of the game,
16 the game may be characterized as a slot machine within the meaning of FL Statute 849.15, however, this
17 office recognizes that the ultimate determination of whether Florida gambling laws may have been
18 violated must be made by local law enforcement agencies." He said this brings the matter full circle and
19 the need to have the cooperation and assistance of the State attorney's office to charge and convict for
20 illegal gambling. He reiterated that pursuing this matter would be costly for the City.
21

22 Council Member Laputka noted that Tel-Connect must still deal with the ongoing code enforcement
23 action by the City. Mr. McCue said that the City must now decide how to address the appeal. Council
24 Member Sandford suggested changes to the code to give the City more authority to deal with the
25 problem.
26

27 Vice Mayor Allebach commented the City does not have the resources to enter into a precedent-setting
28 case that could go all the way to the Supreme Court. Mr. McCue stated the City should at least defend
29 the appeal. Mayor Strickland asked how much the City would have to spend for the defense. Mr.
30 McCue responded that if the City is successful in striking a negotiated settlement, the legal fees would
31 not go as high as \$50,000. Ms. Drage said that she would suggest to Tel-Connect's attorney that they
32 stay the appeal until such time as a mutually agreed upon settlement could be reached. The applicant
33 could proceed through the conditional use process during that time and then if that is approved, the
34 appeal would be dropped.
35

36 Mayor Strickland suggested that the City Attorney negotiate with opposing counsel. Secondly, it should
37 be made clear that Council intends to defend the decision of the Special Master that the Attorney report
38 back to the Council before proceeding to a lawsuit. Mr. Reischmann said that he could initiate
39 discussions with opposing counsel about the different options that are available to City and what Tel-
40 Connect would like to do and how that relates to a conditional use permit. In the meantime, the City
41 must file a response by the middle of next week, unless there is a stipulation that the pending appeal
42 could be stayed. Mayor Strickland expressed that he felt the City Attorney should prepare a response to
43 the appeal. He said that he felt more time and investigation is needed at present and then a report should
44 be made to the Council so that they can determine their course of action.
45

46 Mr. McCue advised Council what to expect as an outcome. He said that from a land use perspective,
47 staff could not find any legitimate reason to deny Tel-Connect a conditional use permit. He stated,
48 "...we all know that its gaming but we cannot use that as a defense in what we are trying to

1 accomplish.” Mr. McCue stated, “So the negotiated settlement, in my opinion, is going to result in a
2 continued operation. What we’re looking for is, do you want us to get out easy and on the cheap side of
3 the agreement, or do you want us to keep pushing it even though we are sitting here in front of you
4 telling you the chances of us getting these gaming operations shut down in Orange City are very
5 unlikely and it will be very expensive to reach a very unlikely outcome. That’s what I need everybody
6 to know.”

7
8 Mr. Reischmann said that if the appellate court upholds the Special Magistrate’s decision, Tel-Connect
9 will have to either stop operating or obtain a conditional use permit. He said that the cost to the City in
10 legal fees will be between \$5,000 and \$10,000. Mr. Reischmann said that he would attempt to get
11 Tel-Connect’s attorneys to stipulate to a stay of the appeal pending application for a conditional use
12 permit. Mr. Reischmann said that ultimately, a favorable ruling could come from the current
13 proceedings in Escambia and Pinellas Counties, and that is what the Volusia County State Attorney is
14 waiting for.

15
16 Council Members Mahoney suggested that one of the conditions that could be imposed on the
17 conditional use is a contribution to Gamblers Anonymous. Mr. Reischmann said that the conditions
18 must be consistent with the land development code. Council Member Mahoney expressed his
19 frustration that the because of a lack of funds, the City can’t define “the community that we want.” Mr.
20 Reischmann noted that the difference between the civil and criminal sides of the judicial system is the
21 frustrating aspect of the case that must be dealt with. Ms. Drage expressed her doubts that Tel-Connect
22 would admit to any wrong-doing in their business operations. Council Member Sandford concurred that
23 the City really has no choice but to defend the ruling of the Special Master. Mayor Strickland
24 concurred. Council Members Laputka, Sherrill, and Abraham also concurred.

25
26 **It was the consensus of the City Council to authorize the City Attorney to**
27 **begin negotiations with Tel-Connect’s Counsel regarding a negotiated**
28 **settlement and to prepare to defend the appeal currently under way.**
29

30 Mr. McCue updated Council on the status of the City’s Closest Unit Response (CUR) agreement. He
31 said that the conflict resolution process set forth in Chapter 164 F.S. is under way. Mr. Reischmann
32 advised that staff has not yet been able to confirm the suggested date of July 24th. Mr. Reischmann
33 commented that he expects confirmation from the County by July 10th noting that the City must publish
34 a 10-day notice as required by Statute.

35
36 Mr. McCue advised that the City must now decide whether to stay with Basic Life Support (BLS)
37 service or pursue legal means to facilitate the granting of the Certificate of Public Convenience and
38 Necessity (COPCN) that is required to provide Advanced Life Support (ALS). He explained that if the
39 City maintains BLS service, they would not be required to respond anywhere outside the city limits, but
40 would be limited to basic services to city residents. Mr. McCue advised that there is a county ordinance
41 in place that requires the City to sign the CUR in order to provide ALS. Mr. McCue clarified that
42 notwithstanding the language in the ordinance that requires the City to negotiate an agreement with the
43 County, the COPCN will not be granted unless and until the agreement is signed. He stated, “There is
44 no option around this.” Mr. McCue said that during negotiations regarding the service areas, the County
45 did not recognize the City’s second fire station. He said that the agreement contains a clause which
46 provides that when an imbalance of calls exists, either party will pay the other party the FEMA rate for
47 the calls. Further, the agreement contains a clause that allows either party to back out of the agreement

1 because of budgetary constraints. However, if the City must respond to calls in the County even if the
2 County is not able to pay because the COPCN is contingent upon the mutual aid premise.

3
4 In response to a question from Council Member Mahoney, Mr. McCue stated that the City will clearly,
5 and without question, be providing ALS services with City equipment and staff in the County with no
6 reimbursement. Vice Mayor Allebach expressed concerns the County could “defund” the program. He
7 observed that the City would have to assume that financial risk in order to provide ALS service to its
8 citizens.

9
10 Mr. Reischmann read from the proposed agreement that Orange City is required to execute the closest
11 unit response agreement in order for the COPCN to be issued. He said the agreement has a clause under
12 which it will terminate at the end of the fiscal year if either the County or the City fails to appropriate
13 funds to pay the compensation required in the agreement. Termination of the agreement also means
14 termination of the COPCN. Mayor Strickland clarified that County staff is telling the County Council
15 that they don’t understand Orange City’s objections to the agreement. Mr. McCue expressed his
16 confidence that the agreement is representative of both parties as it stands today. In summary, Mr.
17 McCue stated, “The bottom line is, is that because that code exists and because that ordinance is in
18 place, we are going to have to enter into that agreement if we choose to provide ALS services with our
19 firefighters. If they do that, we run the risk that at some point in time, the County backs out of it and
20 we’ll be faced with the same decision again when they take our ALS. That’s where we’re at right now.
21 My recommendation...my recommendation is very clear on this one...July 22nd we’ll bring this draft
22 agreement back. If the Council approves it, we get the County Council to approve it, we have our ALS
23 the next day, but you’ll be watching Orange City equipment and fire fighters responding to emergency
24 medical calls out off from Hamilton Road all the way up to New York. That’s what our guys are going
25 to be required to do. And I think that’s ludicrous, but I can’t do anything about it any more. I’ve been
26 fighting it for three years now.”

27
28 Mr. Reischmann advised that the first conflict resolution meeting will be attended by administrators of
29 the two parties to the suit. If that meeting is not fruitful, the next step is for the two Councils to meet.
30 Mr. McCue said that the issue is whether the County has the right under their delegated authority from
31 the State to adopt an ordinance an use “reasonable conditions for the issuance of a COPCN” and the
32 City’s position will be that the requirements the County is imposing are not reasonable. He said that the
33 only real solution is to challenge the County’s code, but that he could not recommend that because it
34 would reflect poorly on the City. Mr. McCue said that he will bring the agreement to Council at the July
35 22nd meeting for Council’s review. If authorized, the dispute resolution process will not be necessary.

36
37 In response to a question from Council Member Mahoney, Mr. McCue said that he is recommending
38 that the City sign the agreement so they can provide ALS in response to feedback from Council
39 Members and from the public. Council Member Mahoney expressed his concern for the effect this
40 could have on the City’s finances. Mr. McCue responded that if the City was losing money by running
41 calls in the County, he would recommend a return to BLS at that time.

42
43 Council Member Sandford questioned what the cost of the CUR would be on an annual basis. Mr.
44 McCue responded that the City would have a “significantly higher number of calls” to the
45 unincorporated area. He said that the costs would be maintenance costs, along with the cost of
46 personnel and the time that the Department is responding to calls in the County when they could have
47 been responding to calls in Orange City. Mr. McCue said that if the City executes the agreement and
48 the County decides to pull out next year due to funding constraints, he and Chief Hoffman would return

1 to Council for input as to whether to continue and that they will have some statistics at that time.
2 Council Member Mahoney asked whether the City has the resources to provide service to the County
3 without degrading the current level of service to its own citizens. Mr. McCue responded that a
4 significant number of Orange City residents will be receiving services from County personnel and
5 County vehicles. He said that the level of service to the City's residents would decrease while the City
6 was "footing the bill" for an increased level of services to residents in the unincorporated area.

7
8 Mayor Strickland said that the next step following the meeting on the 24th is for the City Council to
9 meet with the County Council.

10
11 Mr. Reischmann detailed possible outcomes from the dispute resolution process. Mr. McCue stated that
12 ultimately, unless the County changes its ordinance, the only way for the City to keep its COPCN is to
13 have a Closest Unit Response Agreement.

14
15 Mr. McCue clarified his position that if the City enters into the CUR agreement, he would recommend
16 discontinuing the dispute resolution process and any potential law suit as it would be moot at that point.

17
18 In response to a question from Council Member Sanford, Mr. McCue estimated that the imbalance of
19 calls would be about 35-40% which would amount to about \$250,000. He noted that the increased use
20 of the trucks would also result in a cost for increased maintenance and shorter life of the vehicles.

21
22 Vice Mayor Allebach said that he felt the City should do what it takes to get ALS and review the
23 statistics when real data is available.

24
25 Council Members Mahoney, Laputka, Sherrill and Abraham supported proceeding with the dispute
26 resolution process.

27
28 Mr. McCue stated, "Just so that you all understand and we're firm with where we're going on this, will
29 not be a route that I believe there is any, any likelihood of successfully getting a negotiated settlement
30 without a Closest Unit Response Agreement. I do not see that as a conclusion. He said that based on
31 the input he received tonight, he will proceed with the dispute resolution process and not bring forward
32 the CUR at the next meeting.

33
34 B. Mayor/City Council

35
36 Mayor Strickland stated that he had concerns regarding the City's ordinances and Charter. He alleged
37 that there are violations of the Charter and Codes of Ordinances. Mayor Strickland said that he took an
38 oath to uphold the Charter and Code of Ordinances and can not remain silent any longer. Council
39 Member Sherrill asked the Mayor if it was his desire to resign. Mayor Strickland responded that he
40 could either discuss his concerns now or during the Manager's evaluation. It was the consensus of the
41 Council to discuss the Mayor's concerns during the City Manager's evaluation.

42
43 **3. CONSENT AGENDA:** None at this time.

44
45 **4. ORDINANCES – FIRST READING:**

46
47 A. **ORDINANCE NO. 358:** An Ordinance Of The City Of Orange City, Florida, Annexing
48 The Heart Of Christ Christian Church Property Into The Corporate Limits Of The City

1 Of Orange City, Florida; Said Property Being Generally Located On The North Side Of
2 West Rhode Island Avenue Approximately 400 Feet East Of South Sparkman Avenue,
3 Containing Approximately 4.32 Acres; In Accordance With The Voluntary Annexation
4 Provisions Of Florida Statute 171.044; Redefining The Boundaries Of The City Of
5 Orange City By Amending The Appropriate Sections Of The Code Of Ordinances;
6 Containing A Repealer Provision, A Severability Clause And Providing For An Effective
7 Date.

8
9 **Council Member Mahoney moved to adopt Ordinance No. 358 on first**
10 **reading, seconded by Council Member Sherrill.**
11

12 Wendy Hickey, Planning and Zoning Analyst, came forward to discuss the annexation of the Heart of
13 Christ Christian Church property located on West Rhode Island Avenue. Pointing out the area on a
14 power point presentation (a copy of which is attached and becomes a part of these minutes), Ms. Hickey
15 said that the property is contiguous to the city limits and meets the Florida statutes for annexation. The
16 4.2 acre property is zoned R4 urban family residential and would increase the City's ad valorem base by
17 \$635.85. Ms. Hickey said that property is vacant at present, but a church group has shown interest in it.
18 Ms. Hickey commented that staff recommends the City Council adopt Ordinance No. 358.
19

20 Council Member Mahoney questioned why the property is not tax exempt. Mr. Murray replied that the
21 property is vacant and would not be classified as tax-exempt until it is purchased as a church. He said it
22 would still generate electric franchise fees, utilities, etc.
23

24 Mr. Murray advised that the property fronts the new western extension of Rhode Island and extends to
25 the school property. He said it is part of the City's annexation program and as the properties along
26 Rhode Island become contiguous, more annexations are anticipated.
27

28 **Motion passed by a 7/0 roll call vote of the Council**
29

30 **B. ORDINANCE NO. 359:** An Ordinance Of The City Of Orange City, Florida, Annexing
31 A Certain Portion Of The Right Of Way Of West Rhode Island Avenue Into The
32 Corporate Limits Of The City Of Orange City, Florida; In Accordance With The
33 Annexation Provisions Of Florida Statute 171.044; Redefining The Boundaries Of The
34 City Of Orange City By Amending The Appropriate Sections Of The Code Of
35 Ordinances; Containing A Repealer Provision, A Severability Clause And Providing For
36 An Effective Date.
37

38 **Council Member Sandford moved to adopt Ordinance No. 359 on first**
39 **reading, seconded by Council Member Abraham.**
40

41 Jim Kerr, City Planner, came forward. Referring to a power point presentation (a copy of which is
42 attached and becomes a permanent part of these minutes) he noted the location of the right of way
43 (ROW) proposed for annexation. He said it would continue ROW's all the way to the anticipated
44 "Beltway". Mr. Kerr said that having unincorporated ROW's adjacent to the city limits causes
45 confusion when providing emergency services. He said there have been no objections from the County
46 with regard to this or the annexation previously discussed.
47

1 Mr. Murray noted that past practice in the City was to annex property into the city, but not to annex the
2 abutting County road. The current policy is to annex the road along with any new properties coming
3 into the City. He said that there will be a large group of annexations of this type coming forward in the
4 near future.

5
6 Council Member Mahoney confirmed that the County understands that the City is not assuming
7 maintenance of the ROW. Mr. Murray responded in the affirmative.

8
9 **Motion passed by a 7/0 roll call vote of the Council**

10
11 **5. PUBLIC HEARINGS/ORDINANCES – SECOND & FINAL READING:**

- 12
13 **A. ORDINANCE NO. 315:** An ordinance of the City of Orange City, Florida transmitting
14 an administrative amendment to the City of Orange City Comprehensive Plan for the
15 purpose of improving the coordination of water supply and land use planning as required
16 by Chapter 163, F. S. The amendment consists of revisions to the Future Land Use
17 Element; Sanitary Sewer, Solid Waste, Storm Water Management, Potable Water and
18 Natural Ground Water Recharge Element; Conservation Element; Intergovernmental
19 Coordination Element; and the capital improvements element; providing for conflict and
20 severability and providing an effective date.

21 *(Postponed on 6/24/08)*

22
23 **Council Member Mahoney moved to adopt Ordinance No. 315 on**
24 **second and final reading, seconded by Vice Mayor Allebach.**

25
26 Mr. Murray came forward and stated that this is the final reading of the City's Comprehensive Plan
27 amendment. He advised that staff has thoroughly reviewed the amendment and that all concerns have
28 been addressed.

29
30 Mayor Strickland opened the public hearing by asking if anyone wished to speak in favor of or in
31 opposition to the proposed ordinance. The City Clerk asked that anyone who wished to speak sign the
32 sign-in sheet and that would entitle them to received updates from the Department of Community
33 Affairs on the status of the amendment. No one appeared. The Mayor closed the public hearing.

34
35 **Motion passed by a 7/0 roll call vote of the Council**

- 36
37 **B. ORDINANCE NO. 351:** An ordinance of the City of Orange City, Volusia County,
38 Florida; amending Orange City Code Chapter 2, Administration, Article III, Boards,
39 Division 3, Historic Preservation Board, by eliminating Section 2-93(3), Section 2-
40 103(9), Section 2-105 and Section 2-106 in their entirety; and by adding Sections 2-107,
41 2-108, 2-109, 2-110, 2-111, 2-112, and 2-113, allowing for and setting forth the
42 requirements for historic preservation easements; amending Chapter 8, Section 8.7 of the
43 Orange City Land Development Code, abating zoning regulations for restoration of
44 historic properties in the event of damage or destruction; establishing the application
45 process for historic preservation easements; providing for conflicts, severability and
46 effective date.

47

1 **Council Member Sherrill moved to adopt Ordinance No. 351 on**
2 **second and final reading, seconded by Council Member Laputka.**

3
4 Elaine Wilson, Planning and Zoning Analyst, came forward and stated this is second and final reading
5 of the Historic Preservation Ordinance. No changes have been made since the first reading. Ms. Wilson
6 said she is available to answer any questions.

7
8 Council Member Laputka commented that his neighbors have been watching the progression of this
9 ordinance and are anxiously awaiting its passage.

10
11 Mayor Strickland opened the public hearing by asking if anyone wished to speak in favor of or in
12 opposition to the proposed ordinance.

13
14 Ann Lindsay, Historic Board Member, said that the development of this ordinance began in 1988. She
15 stated, "All I can say is hallelujah."

16
17 The Mayor closed the public hearing.

18
19 **Motion passed by a 7/0 roll call vote of the Council**

20
21 **6. RESOLUTIONS:**

- 22
23 **A. RESOLUTION NO. 484-08:** A Resolution Of The City Council Of The City Of Orange
24 City, Florida, Adopting A Revised Miscellaneous Fee Schedule For Water And
25 Wastewater Services Provided By Orange City Utilities; Providing For Conflicts;
26 Providing For Severability; And Providing An Effective Date.

27
28 **Vice Mayor Allebach moved to approve Resolution No. 484-08,**
29 **seconded by Council Member Laputka.**

30
31 Christine Davis, Finance Director, came forward and reminded Council that recently the new Utility
32 Code was adopted noting that this resolution updates the miscellaneous fee schedule of the new code.
33 Referring to Exhibit "A", Ms. Davis said that all the added fees have been underlined. The fees apply
34 mainly to commercial locations and new construction sites and were determined based on other Utility
35 departments run by surrounding municipalities.

36
37 Paul Johnson, Public Works Director, came forward and commented that there are potential impacts that
38 the new code addresses and these fees would mitigate those impacts. He noted that the lines that feed
39 the fire suppression systems are not metered, therefore, there has been no way to assess a charge to the
40 businesses for the water used to run tests.

41
42 Council Member Sandford questioned what would constitute a conservation penalty. Mr. Johnson said
43 watering the lawn on the wrong day could result in a penalty being levied, noting it could be monitored
44 by Code Enforcement or reports of abuse from concerned citizens. Mr. McCue advised that the County
45 can also issue citations on behalf of the City.

46
47 **Council Member Mahoney moved for a ten minute recess, seconded**
48 **by Council Member Laputka and passed by unanimous 7/0 voice vote.**

1 Mayor Strickland recessed the meeting at 9:00, reconvening at 9:12.

2
3 **Motion for Resolution 484-08 passed by unanimous 7/0 roll call vote**
4 **of the Council.**

5
6 **7. DISCUSSION AND ACTION:**

7
8 **A. City Manager's Evaluation (*Postponed on 6/24/08*)**
9

10 Council Member Laputka said that he reviewed the summary of the evaluations and that 80% of the
11 ratings were in the "meets or exceeds expectations" categories. Council Member Mahoney said that on
12 nine out of ten rated areas, the majority of the Council graded the City Manager as "meets or exceeds
13 expectations."
14

15 Mayor Strickland asked for feedback on the new form. Council Member Laputka said that he liked the
16 form. Council Member Mahoney concurred that the new form was "effective."
17

18 Vice Mayor Allebach said that there were some remarks made in the comments section that could cause
19 liability issues for the City without documentation. He disagreed with some of the comments made by
20 other Council Members, noting that often the City Manager can't really "create office hours." He stated
21 that he felt Mr. McCue was doing "a great job." Vice Mayor Allebach noted that every city in Volusia
22 County except for Orange City was laying off people. He cited high retention rates for City employees.
23

24 Council Member Mahoney said that when he looks at the results of the evaluations, he sees a success
25 rate on 90% of the items. He advised that he is "results-oriented" and felt that was also true of the City
26 Manager. Council Member Mahoney stated, "It concerns me that at times we lose sight of that."
27

28 Council Member Abraham said that the City Manager was seeking input from the Council as to what
29 they perceive as his strengths and weaknesses. He said that in his evaluation he attempted to examine
30 both. Council Member Abraham said that he felt his evaluation was very "well balanced." He clarified
31 that the evaluation is based upon the Manager's performance over the last year.
32

33 Council Member Sherrill concurred with Council Member Mahoney's evaluation. He said that Mr.
34 McCue has always received a high rating from him and that he "whole-heartedly agrees with how he
35 handles himself." Council Member Sherrill complimented the staff and their level of training. He said
36 that when he asks Mr. McCue to get something done, it happens. Council Member Sherrill stated, "I,
37 for one, appreciate what John does."
38

39 Mayor Strickland expressed his concerns about the City Manager and said that his concerns about his
40 oath of office is a separate item. The Mayor said that he sees many positive things that Mr. McCue has
41 done. He stated that his remarks to follow have nothing to do with trying to get rid of Mr. McCue.
42

43 Council Member Sandford noted that one thing that was an issue for him was that while he was a
44 candidate, he repeatedly stopped by Mr. McCue's office and he was usually not there and staff didn't
45 seem to know where he was. He said that eventually, he gave up trying to catch Mr. McCue in his
46 office. He noted that recently there was an absence and no one seemed to know where Mr. McCue was.
47

1 Council Member Sherrill noted that Council had been provided with a list of senior employees cell
2 phone numbers. He said that Mr. McCue can always be reached by cell and that he always answers his
3 calls. Council Member Sherrill stated, "That's the kind of City Manager I like, where I can get ahold of
4 him. I don't want him sitting in his office all the time."

5
6 Council Member Mahoney stated that if he had a conflict, he would discuss it with the City Attorney
7 before bringing the issue out in public to make sure that he was correct because it could be harmful to
8 the City if he was not. Mayor Strickland said that he has sought legal counsel including the City
9 Attorney.

10
11 Mayor Strickland stated that upon entering office in November, he discovered there was a signed
12 contract between the VIA and the City Manager for 100 years under terms that seemed to be "most
13 favorable to the ladies." He said that he requested that the Attorney review the contract and it was
14 deemed to be invalid because it was entered into without Council knowledge or approval. The Mayor
15 said that it "bothered him a great deal."

16
17 The Mayor said that during the election, the City Manager made a statement that if any of the new
18 candidates were elected, he would resign. He said that he views that as being a violation of the charter
19 prohibition against employees becoming involved in political campaigns. Mayor Strickland noted that
20 these comments were made to two different newspapers and stated that he found the comments to be
21 "very insulting." He said that he views this as a violation of the Charter.

22
23 Mayor Strickland noted that there is a tree ordinance in the land development code. He said that one of
24 the issues that made him run for office was that the Tree Board was not meeting regularly. The
25 ordinance also provides that if trees removed by a developer can not be replaced, contributions were to
26 be made to the City's tree bank to be used to for the replacement and maintenance of trees on public
27 rights of ways. He said that he was informed that there was no money in the tree bank, but that trees had
28 been planted.

29
30 Mayor Strickland also stated that the code requires that the City Manager respond in writing within 48
31 hours to any member of the public coming before the Council during citizens comments and to inform
32 the Council of action taken at the next Council meeting. He stated, "Since I have been Mayor, this has
33 not been occurring." Mayor Strickland said that he has received several complaints that people have not
34 received a response to their concerns brought forth during Council meetings.

35
36 The Mayor said that the Charter requires that the Manager attend all meetings of the Council. He
37 observed that that has not occurred and that there is no provision in the Charter to excuse the Manager
38 from a meeting, therefore, the Manager should be present or there should be no meeting.

39
40 Mayor Strickland stated, "These are my concerns and I did not want to go any further concerning my
41 oath of office without raising them with this Council and with our City Manager."

42
43 Council Member Mahoney stated, "With all due respect, I would be very surprised if the City Manager
44 entered into a contract without Council approval. No disrespect intended, sir." He clarified that he was
45 referencing the contract with the VIA. Mayor Strickland said that he obtained a copy of the contract as
46 a public record from the City Clerk. Regarding the remarks in the newspaper, Council Member
47 Mahoney said that the Manager has no control over what is reported in the media which is often false.
48 Mayor Strickland responded that the remarks appeared in two newspapers. Council Member Mahoney

1 commented that if monies are not being properly deposited in the Tree Bank, it is an internal deficiency
2 which must be addressed. In regard to the Charter requirement that the Manager attend all meetings,
3 Council Member Mahoney said that this issue is being addressed in the charter review. Council
4 Member Mahoney observed that quite often the Manager does not receive Council direction in regard to
5 the handling of citizen complaints. The Mayor responded that the code requires that he respond and if
6 that is not to be the case, the code needs to be changed.

7
8 Council Member Abraham said that he also had concerns regarding the political comments that Mr.
9 McCue made during the election. He said that he addressed these concerns in an email to the Manager.
10 He said that he later discussed this issue with Mr. McCue, but that he also considered this a violation of
11 the Charter. He said that he did not consider this incident when completing Mr. McCue's evaluation.
12 Council Member Abraham expressed concern that the City Manager is not a member of the ICMA even
13 though Section 14 of his contract provides that he will be paid for the membership and attendance at the
14 conferences. Mr. McCue responded that since Orange City is a small municipality, he did not feel the
15 expense of attending conferences in far-away places was justified. He said that he is a member of
16 FCCMA which also adopts the ICMA code of ethics. Council Member Abraham questioned whether
17 lack of a membership in ICMA constituted a breach of the City Manager's contract. Mr. McCue said
18 that as long as he complies with the code of ethics, he is satisfying his contract requirement. Council
19 Member Abraham stressed the importance of complying with the code of ethics.

20
21 Mr. Reischmann stated that the contract does not say that the City Manager must belong to ICMA. He
22 said that he could not defend the position that the City Manager's lack of a membership in ICMA is a
23 violation of Section 14 of his contract. Council Member Abraham asked if it could constitute a "partial
24 violation." Mr. Reischmann said that it is either a violation or it's not. He said that if it is Council's
25 desire that the membership be mandatory, then this section of the contract should be amended to reflect
26 that.

27
28 **Council Member Mahoney moved that the City Manager be granted a**
29 **5% pay increase, seconded by Council Member Sherrill.**
30

31 Council Member Abraham noted that these are hard economic times across the Country. He stated that
32 220 teachers are being laid off in Volusia County while everyone is paying over \$4 per gallon for gas.
33 He said that due to the financial hardships being experienced by the general population, he could not
34 support the increase. He questioned the rationale behind the motion and noted that it is the citizen's
35 money. Council Member Mahoney responded that performance needs to be rewarded and that his
36 recommendation is based on the evaluation by the City Council in which Mr. McCue was rated as
37 "meets or exceeds expectations" in 90% of the categories. Council Member Abraham expressed his
38 concern over the money to fund the increase. Vice Mayor Allebach responded that Orange City has not
39 had layoffs due to the management skills of the City Manager. The Vice Mayor noted the Manager's
40 many successes and asked, "How can you not reward the Manager, the CEO, of that company who has
41 provided that success?"

42
43 In response to a question from Council Member Laputka, Council Member Mahoney said that a 3%
44 increase seems "demeaning" based on the Manager's performance. Council Member Sandford asked
45 whether the 5% was above and beyond the Manager's COLA increase. Council Member Mahoney
46 responded in the affirmative. Council Member Sandford asked whether Council Member Mahoney
47 would be able to justify a tax increase to fund the raise. Council Member Mahoney responded that he

1 did not feel a tax increase would be necessary. He stated, "I'll state this no matter how many people
2 object, I think John McCue is a bargain."

3
4 Council Member Sandford expressed his opinion that the Manager already has a cost of living increase
5 in his contract and given that the unemployment rate is high and that these are tight financial times, he
6 said that he could not support a 5% raise.

7
8 Council Member Abraham noted that Orange City is a small city when it comes to districts, but "when it
9 comes to the City Manager or somebody's salary, it's not a small city." He said that management
10 should have an upper limit put on their salary and stated, "I think Mr. McCue has reached that upper
11 limit."

12
13 Council Member Laputka said that he questioned the 5% amount and that he would be more
14 comfortable with 3%. He said that he felt the 5% was "an arbitrary number."

15
16 Ms. Davis stated that 5% of Mr. McCue's base salary would be an annual increase of \$5,757. In
17 response to a question from Council Member Sandford, Mr. McCue stated that the amounts for his 457
18 and FRS are defined in his contract. He said that the COLA is given in October and is usually 3%.
19 Council Member Mahoney noted that the FRS contribution would increase because it is based on a
20 percentage of Mr. McCue's salary.

21
22 Council Member Sherrill asked whether the increase should be made retroactive to March 25th. Council
23 Member Mahoney stated that was not part of his motion.

24
25 Mayor Strickland said that he would respect any decision the Council makes, but that his personal belief
26 is that there are many areas of the Manager's performance that could be improved. He said that he
27 would recommend no increase at this time.

28
29 **Council Member Sherrill moved to amend the motion to make the**
30 **increase retroactive back to the date of the Manager's contract.**
31 **Motion died for lack of a second.**

32
33 **Motion passed by 4/3 vote with Council Members Sandford and**
34 **Abraham and Mayor Strickland voting, "no."**

35
36 **B. Investment Options**

37
38 Mr. McCue said that Jeff Larson, Investment Banker, D.A. Davidson & Co., was present to make a
39 presentation regarding investment options. Mr. Larson provided a power point presentation (a copy of
40 which is attached and becomes a permanent part of these minutes).

41
42 Mr. Larson discussed the qualifications of his company and the purpose of an Investment Advisor. He
43 stated that typically, an investment advisor gets involved when there is in excess of \$25 million and that
44 Orange City's core funds are \$3 to \$4 million. He said that because of this, he did not recommend that
45 it would be financially prudent for the City to utilize an investment firm at this time.

46
47 Mr. Larson advised that there is a statutory requirement for cities to have an investment plan and that
48 Orange City recently updated theirs.

1 Mr. Larson recommended that the City have enough money to run the City for 30-60 days readily
2 available in a local bank. Council Member Mahoney questioned why this period of time was so long
3 and said that his first impression is that it is 30 days longer than need be. Mr. Larson responded that this
4 was because the City's funds do not come in a steady, even flow. He noted that the City's funds are
5 very liquid at this time. He said that once the City has enough money in short-term investments, it may
6 be advisable to balance that by investing the remaining balance in options that have a one-two year
7 maturity. Mr. Larson discussed some of the available investment options.

8
9 Next, Mr. Larson discussed the process for determining how much available cash may be needed
10 (liquidity of funds). He explained that it is different in each particular situation and once identified, it is
11 the basis for determining how to spread the investments wisely to protect solvency in the event of an
12 emergency.

13
14 Mr. Larson discussed the City's investment plan and noted that the first priority is safety of principle.
15 He cited recent examples such as the problems at the SBA. He stressed that caution must be used in
16 choosing investment funds.

17
18 The third priority is yield and the fourth is transparency. He said that it is very important that the City
19 know and understand the interest rates and fees associated with their investments. Mr. Larson urged
20 caution when using money market funds to choose funds that have interest rate stability.

21
22 Mr. Larson said that Chapter 163 of the Florida Statutes allows cities to group together and form a pool
23 to increase their investment purchasing power. The Florida Safe pool is made up exclusively of Florida
24 governmental units. The Board of Trustees for the pool is made up of Investment Officers from the
25 local governments.

26
27 Council Member Mahoney questioned how the Board of Florida Safe differs from the Board of the
28 SBA. Mr. Larson responded that the participants of FL Safe elect their own Board of Trustees.

29
30 Mr. Larson recommended the following options for Orange City: keep 30-60 days with a local bank;
31 the LGIP (FL Safe) and AIM for long term. He recommended keeping the investments short and safe.
32 Mr. Larson expressed his opinion that the City is under investing its money today. He said that the City
33 appears to be in good shape. He said that the decision that remains is how conservative the City should
34 be. Mr. McCue said that he believes in keeping the investments simple and recommended a pool like
35 FL Safe and an AIM account. In response to a question from Council Member Mahoney, Mr. Larson
36 said that he felt the return on the City's bank account is "a little low." He said that it's "okay to be a
37 little conservative."

38
39 Mayor Strickland asked Mr. Larson how much risk the City should assume with its investments. Mr.
40 Larson recommended putting some of the funds in the AIM account that is comprised of only US
41 Governments. He emphasized that he was recommending a focus on increasing the City's return, not
42 the risk. He said that the return of 0.7 from the bank is substandard.

43
44 Mr. McCue expressed his confidence in the FL Safe fund and he said that it is very similar to the SBA
45 account. Mr. Larson said that what went wrong with the SBA is that the Board of Trustees was not
46 monitoring the fund. Mr. McCue said that the City is not currently making that much money on its
47 investments because of "the fear factor" after the incident with the SBA. He still disagreed with Mr.
48 Larson that the money in FL Safe is as safe as a bank investment.

1 Mr. McCue said that he concurred with Mr. Larson's recommendation to split the City's funds between
2 the AIM and FL Safe pools and to continue to work with Mr. Larson to ensure that the City has secured
3 the best investment deals.

4
5 **It was the consensus of Council to follow Mr. Larson's advice.**

6
7 **8. REPORTS:**

8
9 A. City Manager

10
11 *This item was moved forward on the agenda and heard following citizen comments.*

12
13 B. Mayor/City Council

14
15 *This item was moved forward on the agenda and heard following citizen comments.*

16
17 C. City Clerk

18
19 The City Clerk had no report.

20
21 D. City Attorney

22
23 *This item was moved forward on the agenda and heard following citizen comments.*

24
25
26 **9. APPROVAL OF MINUTES:**

June 24, 2008 Regular Council Meeting

27 June 16, 2008 Charter Review Meeting

28 June 23, 2008 Charter Review Meeting

29
30
31 **Vice Mayor Allebach moved to approve the minutes of the June 24, 2008**
32 **Regular Council Meeting, seconded by Council Member Laputka and passed**
33 **by a unanimous 7/0 voice vote of the Council.**

34
35 **Vice Mayor Allebach moved to approve the minutes of the June 16, 2008**
36 **Charter Review Meeting, seconded by Council Member Laputka and passed**
37 **by a unanimous 7/0 voice vote of the Council.**

38
39 **Vice Mayor Allebach moved to approve the minutes of the June 23, 2008**
40 **Charter Review Meeting, seconded by Council Member Laputka and passed**
41 **by a unanimous 7/0 voice vote of the Council.**

42
43 **10. COUNCIL COMMENTS**

44
45 Council Member Mahoney said that he received very positive responses on the City's July 4th
46 celebration. He stated, "Well done, folks."
47

1 Council Member Sherrill commended staff for the 4th of July event and the splash pad.

2

3 Mayor Strickland asked the City Manager when Council should get involved in the issuance of the
4 certificate needed from the Health Department. Mr. McCue said that he would send an email to the
5 Health Department tomorrow. The Mayor stated, "This needs to be up and running, it's been long
6 enough. It's been a long, long, long time and that's enough. So we need to move on."

7

8 **11. ADJOURNMENT**

9

10 There being no further business, Mayor Strickland adjourned the meeting at 10:57 p.m.

11

12

13 **RESPECTFULLY SUBMITTED:**

14

15

16

17 Deborah J. Renner, CMC

18 City Clerk

19

APPROVED ON:
