

1 **MINUTES OF THE REGULAR MEETING** of the City Council of the City of Orange City, Florida,
2 held on Tuesday, October 14, 2008 at 7:00 p.m. in Council Chambers, 201 N. Holly Avenue, Orange
3 City.

4
5 **CALL TO ORDER**

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

9 **ROLL CALL**

10
11 **PRESENT:** Mayor Harley Strickland; Vice Mayor Jeff Allebach; Council Members; Tom Laputka,
12 Tom Abraham, Don Sherrill, Donald Sandford; Jim Mahoney; City Attorney William
13 Reischmann; Interim City Manager Chester Murray, City Clerk Deborah Renner
14

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

17 Mr. Murray requested to have a brief presentation on the City's investments added to the agenda.
18

19 **Vice Mayor Allebach moved to add this item to the agenda, seconded by**
20 **Council Member Mahoney and approved by a 7/0 voice vote of the**
21 **Council.**
22

23 **1. PRESENTATIONS:**

Status Report on WAV

24 Lindsay Roberts, Executive Director, WAV came forward and provided a power point presentation (a
25 copy of which is attached and becomes a permanent part of these minutes) on the current conservation
26 activities of WAV. Ms. Roberts stressed the need for conservation and potential alternative sources of
27 water for the future, as well as the need to work together.
28
29

Investment Program

30
31
32 Glenn Scott, V.P./Portfolio Manager, D.A. Davidson came forward. Mr. Murray explained that the City
33 is looking for a safe place to put its money until the markets are more secure. He recommended putting
34 the money into government-backed securities. Mr. Murray said that this issue will be returned to
35 Council on October 28th for authorization to sign a contract for this investment action.
36

37 Mr. Scott discussed investment strategies for governments and non-profits, explaining that preservation
38 of principal is the main objective followed by assurance of appropriate liquidity, and yield. He
39 discussed his role as an investment advisor and the proposed investment program for the City, noting
40 that they are recommending working with Wells Fargo to serve as a trust bank to hold securities that
41 may be purchased under the proposed contract. Mr. Scott explained his role, stating that he is an
42 "investment advisor" and that he does not sell securities. He noted that currently the City's investment
43 policy was updated in July. Mr. Scott said that if approved, staff would come before Council with an
44 approved list of secured, safe, money market funds, government agency securities, and U.S. Treasury
45 securities. He said that would improve the diversification and quality of the City's investment portfolio.

1 Council Member Mahoney stated that he was "surprised" that a change is being proposed for the City's
2 investments at this time since the issue was just addressed a couple of months ago. Council Member
3 Mahoney questioned the benefits of treasury strips, noting that the City had previously been advised that
4 this would not be an appropriate investment as they would be too expensive for the City's scale. Mr.
5 Scott responded investing in treasury strips is "not particularly difficult to do" and that the cost of the
6 investment is low. He explained that recently there had been a "run" on these funds that caused the
7 yield for treasury strips to drop as low as zero. Mr. Scott advised that the investment policy is set by
8 Council at their discretion. Council Member Mahoney reiterated his position that yield is a distant third
9 in importance to him after preservation of principle and liquidity.

10
11 Mr. Murray and Ms. Davis said that the current investment goals are to increase security and
12 diversification. Mr. Murray said that the City will have access to the money on a daily basis if needed.
13 He stressed that this strategy will be for the short term until the market stabilizes. He said that he would
14 put the agreement on the agenda for the next Council meeting.

15
16 In response to a question from Council Member Mahoney, Ms. Davis advised that the Fund Balance
17 remains where it has been as the City tried to move the money into the FL Safe Investment Pool and the
18 pool was frozen. She said that the City has not lost any money, that it remains in an account with
19 BB&T. Mr. Murray said that the Federal Government recently moved to underwrite and secure all
20 money market funds. It was the consensus of the Council for staff to return with an agreement on
21 October 28th.

22
23 **2. CITIZENS COMMENTS:**

24
25 Henry Durica, 1310 E. Lansdowne Avenue came forward and noted that Council Member Sandford has
26 been working out of town which has resulted in his being absent from several meetings. He mentioned
27 issues which he felt should be considered when determining whether absences should be excused. In
28 conclusion, Mr. Durica stated, "If someone is appointed to fill a vacancy, I hope you don't lose sight of
29 the fact that this person was voted in by our citizens. Hopefully, wisdom will prevail and the appointed
30 one will not be someone who was voted out of office because this would certainly give the perception of
31 a good old boy Council at work."

32
33 **3. CONSENT AGENDA:** None at this time

34
35 **4. ORDINANCES – FIRST READING:**

- 36
37 **A. ORDINANCE NO. 360:** An ordinance of the City of Orange City, Florida, submitting to the
38 electors of Orange City proposed amendments to the Charter of the City of Orange City which
39 shall be considered by mail-in ballot; providing ballot titles and summaries for the proposed
40 charter amendments; providing for direction to the City Clerk; providing for conflicts,
41 severability, and an effective date for the ordinance and for the approved amendments.

42
43 **Council Member Laputka moved to adopt Ordinance No. 360 on the first**
44 **reading, seconded by Council Member Mahoney.**

45
46 Mr. Reischmann noted that as directed, changes were made to the Ordinance No. 360. He said specific
language was eliminated, titles were clarified and Council's comments were incorporated. If approved,

1 this information would be sent to the voters in a mail ballot. Council Member Mahoney commented that
2 the language was "much clearer".

3
4 Council Member Sherrill stated that he would like to recommend a change to the Charter that would be
5 included on the mail-out ballot. As a point of clarification he questioned the appropriate time to discuss
6 the matter. Mr. Reischmann advised that Ordinance No. 360 outlines the language to be used for the
7 title and summaries for the ballot. He advised that changes could be made now, but not at second
8 reading. Mr. Reischmann stated his understanding that Council Member Sherrill would like to make
9 additional changes for Council to consider. Mayor Strickland expressed his concern that there is not
10 enough time to address a change at this point. Discussion ensued as to whether or not a change could be
11 made tonight.

12
13 **Council Member Sherrill moved to change Section 2.09, Qualifications,**
14 **disqualifications and forfeiture of office. Paragraph (a), third sentence,**
15 **to read, "Absence by a member from four regular or special meetings of**
16 **the City Council within a twelve month period shall cause the seat to be**
17 **come vacant unless such absence is excused by the City Council, seconded**
18 **by Vice Mayor Allebach.**
19

20 Council Member Sherrill said that over the past several weeks there have been problems with absences
21 from Council meetings and suggested that it needs to be addressed. Vice Mayor Allebach clarified that
22 special meetings had been added. Mayor Strickland noted that the word "consecutive" has been taken
23 out. He stated, "It's four meetings a year. If you miss four meetings in a year, you're off the Council."
24 Council Member Laputka clarified that it is four unexcused absences. Mayor Strickland responded that
25 an excused absence has not been defined.

26
27 Council Member Mahoney stated for the record, "I don't think anyone has gamed the system." He
28 observed that there were communication issues and that he would have excused the absences once he
29 understood the reasons. Council Member Mahoney expressed that he could not support four absences a
30 year, especially since there is no procedure for excusing an absence. Council Member Mahoney
31 suggested that the proposed change is too extreme. Council Member Laputka agreed there is a need to
32 "stiffen up the rules" to make them fair, however he said that the motion on the table is "a little too
33 tight."
34

35 Mr. Reischmann said that he had been working with the City Manager and City Clerk to create an
36 amendment to the *Council Rules and Procedures* to include a subsection on the agenda that provides an
37 opportunity for Council to consider whether a prior absence by a Council Member was excused or not
38 excused. He said that would be brought before Council at a later date. Mr. Reischmann commented
39 that it is difficult to craft what is and what is not an excused absence. He said there is limited guidance
40 from Attorney General Opinions that give a clear definition on what a Council could determine is an
41 excused absence. He suggested that these matters could be reviewed on a case by case basis. Vice
42 Mayor Allebach stated, "We need to quit worrying about this and get on with doing the stuff that we
43 need to do, like find a way to put up benches for the VoTran bus stops because every day I drive by and
44 there's people using the bus more and more and there's no place for them to sit." The Vice Mayor
45 maintained that it's time to move on and "get on with the business of taking care of the City."
46

47 Council Member Abraham agreed with Vice Mayor Allebach's comments. He said that the
48 four-meeting rule is common in cities around the State.

1 **Amendment failed by a 1/6 roll call vote of the Council, with Council**
2 **Members Mahoney, Laputka, Sandford, Abraham; Vice Mayor**
3 **Allebach and Mayor Strickland voting "no."**

4
5 Council Member Abraham questioned whether the language "above described" which is part of each
6 charter question is appropriate. Mr. Reischmann responded that that exact language is called for by the
7 charter.
8

9 **Main motion passed by a 7/0 roll call vote of the Council**

10
11 **5. PUBLIC HEARINGS/ORDINANCES – SECOND & FINAL READING:** None at this time

12
13 **6. RESOLUTIONS:**

- 14
15 **A. RESOLUTION NO. 499-08:** A resolution of the City Council of the City of Orange
16 City, Florida, amending the annual operating budget for fiscal year 2007-2008 by
17 adjusting revenue and expenses; repealing all resolutions or parts of resolutions in
18 conflict herewith; and providing for an effective date.
19

20 **Council Member Laputka moved to approve Resolution No. 499-08,**
21 **seconded by Council Member Sandford.**
22

23 Mr. Murray advised that a revised cover memorandum for this agenda item was distributed to Council.
24 He said that the only change was the "Subject" of the memorandum should read "Final" not "Mid-
25 Year." Mr. Murray advised that the General Fund revenues were increased by \$149,500 and the
26 expenditure projections are being increased by \$149,500. He said this is the final budget adjustment for
27 Fiscal Year 2007-2008.
28

29 In response to a question from Council Member Mahoney, Ms. Davis advised that the line item in Public
30 Works for a \$50,000 study would be moved forward into the next fiscal year. In addition, the \$200,000
31 in disaster expenses is recoverable, but would not be received during the 07/08 fiscal year. She said that
32 the money would be recorded in a budget amendment during FY 08/09.
33

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

- 35
36 **B. RESOLUTION NO. 501-08:** A resolution of the City Council of the City of Orange
37 City, Florida, authorizing the appropriate city officials to enter into a license agreement
38 with the Council on Aging of Volusia County, Inc. to utilize the Orange City Senior
39 Citizens Center known as Wava's Hall for provision of senior citizen
40 activities/programming services; repealing all resolutions in conflict herewith and
41 providing for an effective date.
42

43 **Council Member Sandford moved to approve Resolution No. 501-08,**
44 **seconded by Council Member Mahoney.**
45

46 Mr. Murray said that the City has enjoyed a "great relationship" with the Council on Aging and that this
47 agreement is for continuation of their present services for another two years. He said that staff highly
48 recommends that the City renew this contract.

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

- 2
3 C. **RESOLUTION NO. 502-08:** A resolution of the City Council of the City of Orange
4 City, Florida, authorizing the Interim City Manager to execute a Memorandum of
5 Agreement with the Florida Department of Transportation regarding the maintenance of a
6 sidewalk to be constructed on the west side of South Leavitt Avenue between East Ohio
7 Avenue and Rhode Island Avenue; directing the City Clerk to provide a copy of this
8 resolution to the Florida Department of Transportation District Five; and providing for an
9 effective date.

10
11 **Council Member Mahoney moved to approve Resolution No. 502-08,**
12 **seconded by Vice Mayor Allebach.**

13
14 Paul Johnson, Public Works Director, came forward and stated that this is an agreement to maintain a
15 sidewalk that will be constructed at no cost to the City. It will be a Local Agency Project (LAP) of the
16 Florida Department of Transportation. The project is similar to the sidewalks that were installed on
17 Sparkman Ave.

18
19 Council Member Mahoney questioned whether there was a lot of foot traffic on this street. Mr. Johnson
20 responded in the affirmative. He said this sidewalk would connect with Rhode Island Avenue. Mr.
21 Murray advised there is a lot of foot traffic in the early morning hours and late evening in the Industrial
22 Park.

23
24 **Motion passed by a 7/0 roll call vote of the Council**

- 25 D. **RESOLUTION NO. 503-08:** A resolution of the City of Orange City, Florida,
26 approving the Interlocal Annexation Agreement in accordance with the enclave
27 annexation provision of Florida Statute 171.046; thereby annexing certain enclave
28 properties into the corporate limits of the City of Orange City, Florida; said Agreement
29 attached as Exhibit "A"; repealing all resolutions or parts of resolutions in conflict
30 herewith; and providing for an effective date.

31
32 **Vice Mayor Allebach moved to approve Resolution No. 503-08, seconded**
33 **by Council Member Sandford.**

34
35
36 Jim Kerr, City Planner, came forward and stated that in 1993 Florida Legislation went into effect
37 permitting counties and cities to enter into interlocal agreements for the purpose of annexing existing
38 enclave properties. He noted the location of the subject properties on a map. Mr. Reischmann discussed
39 the legal differences between an enclave annexation and a voluntary annexation. He explained that an
40 enclave is developed land of less than 10 acres that is surrounded on all sides by City property. These
41 annexations cannot be done without mutual agreement between the City and the County. Mr. Murray
42 advised that the City has the complete cooperation of the County.

43
44 Mayor Strickland noted that he received a letter was from Arlington B. Haynes, owner of Haynes
45 Brothers Furniture, requesting not to be included in the annexation (a copy of which is attached and
46 becomes a permanent part of these minutes). Mr. Reischmann noted that if this property is excluded, the
47 two adjacent properties would not meet the definition of an enclave. Mayor Strickland questioned the
48 financial effect the annexation would have on the property owner. Mr. Kerr noted there would be a

1 savings of \$1,353 in ad valorem taxes for the property owner. The Mayor clarified that the Mr. Haynes' objection has to do with potential future costs. Mr. Kerr stated that all ten properties will benefit by reduced property taxes. Mr. Kerr summarized by stating that this annexation consists of six enclaves of 10 properties totaling approximately 7.5 acres and will bring a combined taxable value of \$3,673,036 into the City limits. It is contiguous to the City limits and meets enclave requirements in the Florida Statutes. Staff recommends that the City Council adopt Resolution 503-08 approving the Interlocal Enclave Annexation Agreement with the Volusia County thereby annexing the enclave properties into the City limits. Mayor Strickland noted that the City was looking for more commercial entities and in this case there are 7 commercial and 3 residential properties out of the total 10 properties being annexed. Council Members Laputka and Sherrill spoke in support of the annexation.

11
12 Tom Brooks, Planner, Volusia County came forward and stated that he has worked closely with Mr. Kerr. He said that generally enclave annexations are considered win-win. The County does not have to provide services where it is inefficient to do so, noting that the City is usually better equipped to provide services in those areas.

16
17 Mayor Strickland opened the public hearing by asking if anyone wished to speak in favor of or in opposition to the proposed ordinance.

19
20 Hugh Strickland, 420 May Street came forward and confirmed that often there is a lot of confusion about whether a property is located within the City limits. He spoke in favor of this action.

22
23 The Mayor closed the public hearing.

24
Motion passed by a 7/0 roll call vote of the Council

- 26
27 **E. RESOLUTION NO. 504-08:** A resolution of the City Council of the City of Orange City, Florida, relating to unfunded mandates, supporting the Florida League of Cities' efforts to utilize any means necessary to require the Florida Legislature to eliminate the unfunded state mandates on local governments to include considering sponsorship of an initiative petition to amend Article VII, Section 18 (a) of the Florida Constitution to eliminate the clause that allows for unfunded mandates by a two-thirds majority, and to potentially amend other clauses of said subsection; and providing an effective date.

34
35 **Council Member Laputka moved to approve Resolution No. 504-08,**
36 **seconded by Council Member Sherrill and passed by a 7/0 roll call vote of**
37 **the Council**

- 38
39 **F. RESOLUTION NO. 505-08:** A resolution of the City Council of the City of Orange City, Florida, supporting an amendment to Florida's Constitution to require the Florida Legislature to operate under the Florida Sunshine Laws.

42
43 **Council Member Mahoney moved to approve Resolution No. 505-08,**
44 **seconded by Council Member Laputka and passed by a 7/0 roll call vote**
45 **of the Council**

- 46
47 **G. RESOLUTION NO. 506-08:** A resolution of the City Council of the City of Orange City, Florida, authorizing the execution of an Agreement between the City of Orange
48

1 City and the City of Deltona for the provision of Fire and Rescue Emergency Dispatch
2 Services; providing for severability, providing for conflicts, providing for implementing
3 actions; and providing for an effective date.
4

5 **Council Member Laputka moved to approve Resolution No. 506-08,**
6 **seconded by Council Member Sherrill.**
7

8 Chief Hoffman, Fire Department, came forward and stated that this Resolution is a continuation of the
9 contract that Orange City has with the City of Deltona for Fire and Rescue Emergency Dispatch
10 Services. The contract has a three-year term, however, due to the transition of Fire Chiefs in Deltona
11 there was a brief lapse during this renewal of the contract. Mr. Murray discussed how well the
12 relationship with Deltona for these services has been working. He said that they offer first class services
13 and while there has been an increase in cost, they have used numerous capital expenditures from which
14 we benefit to improve the system. He stated "I appreciate their willingness to work with us and try to
15 keep this thing as reasonable as they could."
16

17 Mayor Strickland noted that this type of partnership is very desirable. He said that the County Council
18 is encouraging municipalities to partner in these types of programs.
19

20 Council Member Sandford questioned whether hydrant mapping was included in the contract. Chief
21 Hoffman responded in the affirmative. Mr. Murray remarked that Deltona's dispatch also answers
22 after-hours calls for the City's Public Works department.
23

24 **Motion passed by a 7/0 roll call vote of the Council**
25

26 **7. DISCUSSION AND ACTION:**
27

28 **A. Alternative Water Source**
29

30 Mr. Murray advised that staff is requesting that a workshop be scheduled to discuss mandates from St.
31 John's Water Management District (SJWMD) to obtain an alternate water source. He said there are
32 very limited options and each option is extremely expensive. He said that Council will be called upon
33 within the next 90-120 days to make decisions that are going to affect the City tremendously in the
34 future.
35

36 Paul Johnson, Public Works Director, reminded Council that some time ago the City met with the
37 SJWMD to discuss the cost of the proposed projects. He said that SJWMD agreed to fund an economic
38 impact study. He said that some of the results are included in the agenda packet, noting that there will
39 be a significant increase in the water utility bills. He gave the example of a customer paying a \$30
40 water bill today increasing to \$150 in the future. He said that the Water Management District based the
41 City's requirements for alternative sources on a ground water model of their choice. Mr. Johnson said
42 that the City pressed for a different model during renewal of its Consumptive Use Permit (CUP),
43 however, the District was very steadfast in not making a change. He said that the cities in Southwest
44 Volusia have been working together with an engineer to develop a Scope of Services to challenge
45 SJRWMD's findings. Mr. Johnson enumerated several of the reasons he objects to the findings of the
46 District advising that they did not take a number of factors into consideration when making their
47 findings such as the results of conservation efforts and the calculation of minimum flows for Blue
48 Spring. Mr. Johnson said that Quentin Hampton is the engineering firm chosen to do the study and

1 expressed his confidence in their work. Mr. Johnson noted that Council had been given a draft copy of a
2 Memorandum of Agreement to pursue the review of SJRWMD's statistics and a verification of their
3 model. He said that if Council agrees, the Agreement would be returned to Council at the next meeting
4 for authorization to execute. Mr. Murray reiterated that it is important to move forward with the
5 agreement and then to schedule a workshop to discuss alternative water sources. He suggested that the
6 workshop be scheduled on a Saturday morning in November.
7

8 **It was the consensus of Council to have the Agreement presented at**
9 **the October 28, 2008 Council Meeting for approval.**

10
11 Council Member Sherrill suggested that the Executive Director of WAV and someone from the Coquina
12 Coast desalination plant be invited to the workshop.
13

14 Council Member Sandford said that from what he has read, it appears that desalination will be the only
15 long-term solution. He stated, "Why don't we just go to desalination from the get-go?" Council
16 Member Mahoney responded, "Buying time." Mr. Murray noted that a plan must be developed by
17 2013. Council Member Sandford noted that each year of waiting increases the cost of the plant. Mr.
18 Reischmann advised that the Coquina Coast project will take about ten years to complete. Mr. Johnson
19 said that the initial cost for the plant would be roughly \$20 per gallon of water at the City's cost. Mr.
20 Murray said that the Yankee Lake project would cost \$32 million plus the cost of the distribution lines.
21

22 *Mayor Strickland recessed the meeting at 8:50, reconvening at 8:55.*
23

24 **It was the consensus of Council to schedule a workshop on November**
25 **22, 2008 at 8:00 a.m. The workshop will be divided into two sessions**
26 **to discuss Alternative Water Sources and GEL issues.**
27

28 Mr. Murray reported that the GEL matter is winding down with the exception of some issues related to
29 groundwater contamination. Mr. Murray stated, "We're at a fork in the road and we all need some
30 direction, your staff needs some direction, your legal advice needs some direction, as well as your
31 engineers." Mr. Murray said that he would like to dedicate half of the time period on November 22nd to
32 discuss GEL and to provide the Council with updates from the contracted engineer and legal counsel.
33 Council Member Sandford recommended dividing the workshop into two sessions; one for the water
34 issue and one for GEL.
35

36 **8. REPORTS:**

37 **A. Interim City Manager**

38
39
40 Mr. Murray reported that repairs to the Police Department in response to the flooding event were
41 completed four weeks ago. New carpet was installed and then the building flooded again. He advised
42 that the sidewalk in front of Council Chambers was being replaced this week.
43

44 Mr. Murray recalled that Council had tasked him with providing recommendations for a procedure for
45 excusing absences by a Council Member and also to provide a mechanism for bringing forward items
46 for the agenda. He suggested that both of these issues could be addressed by adding them as permanent
47 items on the agenda. An item called "Council Member Absences" and would be used to address an
48 absence occurring at the previous Council Meeting. During this item, a motion can be introduced which

1 asks, "Shall the absence of Council Member 'X' be excused?" He said that the item could contain
2 backup as to the reason for the absence. The second issue could be covered in a new item on the agenda
3 titled "New Business." Any issues a Council Member would like to bring forward for discussion and/or
4 action at a future meeting could be introduced at this time.
5

6 Mayor Strickland questioned whether an absence would be excused by a simple majority or if it would
7 require a supermajority of votes. Mr. Murray responded that would be Council's decision.
8

9 Mr. Murray asked Chief Hoffman to come forward and report on the Fire Department's annual
10 inspection by the Health Department. The Chief stated that the facility was "completely and
11 thoroughly" inspected today and no deficits were found. The Chief said that this is the first time in his
12 memory that not one issue was found. He commended his staff for their work.
13

14 Council Member Sandford questioned whether there was a lot of work done in preparation for the
15 inspection. Chief Hoffman responded in the negative, stating that in anticipation of the inspection, they
16 had worked to make sure everything was in order. Council Member Sandford stated, "Thank you for
17 your efforts."
18

19 Council Member Mahoney noted that during the charter review, a number of issues had surfaced which
20 everyone agreed would be better addressed in the *Rules & Procedures*. He said that at the last meeting,
21 the City Attorney had advised that the *Rules & Procedures* apply only to the conduct of the meeting and
22 that other issues are covered by "policies." Council Member Mahoney noted that there are a number of
23 items still outstanding from the charter review and he suggested that these issues be addressed on a future
24 agenda. He cited public information access and putting items on the website as examples. Council
25 Member Mahoney requested that these issues be placed on a future agenda for discussion and action.
26

27 Mr. Murray reported that he has learned a number of other cities have had issues related to garbage
28 assessments placed on vacant homes. Some of these cities have developed a system by which a
29 homeowner could request an exemption from the assessment. He said that staff is investigating this
30 issue and hope to bring something back to Council in the near future. Mr. Murray stated, "I just want
31 the Council to know and the audience to know that we are, we see the issue and we've gone to work on
32 it."
33

34 **B. Mayor/City Council**

35
36 There were no further reports from Council.
37

38 **C. City Clerk**

39
40 The City Clerk had no further report.
41

42 **D. City Attorney**

43
44 Mayor Strickland noted that issues have surfaced recently regarding alleged charter violations by
45 Council Members and Council Members violating their oath of office. He asked Mr. Reischmann to
46 address this issue.

1 Mr. Reischmann responded that there are two sections in the Charter that would address these issues.
2 The first is Section 2.09 and the other Section 6.01. Mr. Reischmann advised that the oath of office
3 requires a Council Member to agree to uphold all of the rules that govern how the City is run. He
4 explained that Section 2.09 defines the qualifications for office and read from this section of the Charter.
5 Mr. Reischmann noted that the penalty provided for violations of this section is forfeiture of office. Mr.
6 Reischmann noted that issues have arisen regarding Section 6.01, Direction and Supervision of
7 Administration. Mr. Reischmann stated, "Your questions, Mr. Mayor, wish for us to start down the road
8 of the analysis of, or the application of 6.01 in conjunction with 2.09 as to a particular Council Member.
9 It's important to recognize that Florida case law and generally United States case law provides
10 that any Council Member has a constitutional property interest in their office, and as such is entitled to
11 due process of law. What that means is, is that if we were going to go down the road of looking into the
12 application of these sections in our Charter as to the behavior of any particular Council Member, then
13 that Council Member is entitled to notice of that analysis, he is entitled to a hearing, a full hearing to be
14 able to provide a response and a defense if, and as necessary, to the results of that investigation." Mr.
15 Reischmann said that if Council wishes, he could provide methodologies used by other municipalities
16 that have been through this process.

17
18 Council Member Laputka asked if the workshop held last Tuesday to discuss Council's Rules &
19 Procedures was going to be continued since outstanding issues remain. Both Council Member Sherrill
20 and Mayor Strickland stated their understanding that the remaining issues would be discussed during a
21 regular meeting.

22
23 Mayor Strickland stated that when he had discussed this issue with Mr. Reischmann eight or nine
24 months ago, it became apparent that to go through the "due process" would be a lengthy and possibly
25 expensive endeavor. He noted that the allegations must be dealt with first and questioned how that
26 would be done. Mr. Reischmann responded by stating, "Some cities do not have the specific provision
27 that you do in Section 2.09. In other words, there are some municipalities that do not have in their
28 charter a process for removal by the City Council or City Commission for removal of one of their own
29 members for a violation of the Charter. Those cities have the power to issue sanctions or rebuke, if you
30 will, for what is perceived to be a code or Charter violation by one of its members." Mr. Reischmann
31 went on to explain that if an investigation proved that a violation occurred, the Governor has the
32 authority to remove an official from office. He further explained that an elected official can be removed
33 from office through the recall process. Mr. Reischmann advised that if it is the desire of Council to
34 conduct an investigation into an alleged violation of the charter, it is "prudent" to retain a third party to
35 conduct the investigation. Council Member Laputka asked, "Are you talking in general terms or are you
36 talking something specific here?" Mr. Reischmann responded that he was talking in general terms. He
37 stated, "We're not getting into any specifics because as I started this conversation, that would be
38 inappropriate and a violation of the due process. Any Council Member has those constitutional rights if
39 that is the desire of this Council. I haven't heard a motion, I haven't heard a second. I haven't heard a
40 request." Council Member Laputka stated, "Thank you for clarifying that."

41
42 Vice Mayor Allebach stated his understanding that in order for a discussion to take place, a motion
43 would be required, a third-party investigator would have to be hired. Mr. Reischmann said that a
44 single Council Member could make a recommendation that an investigation be initiated by an
45 independent, third-party, pursuant to Section 2.09. If that motion was seconded, a brief discussion could
46 take place to determine if it was the desire of Council to proceed. If the motion passed, the investigation
47 would be conducted and a hearing would be held. The respondent would then be provided with all of
48 the evidence given to the investigator and could give a response at the hearing. Mr. Reischmann stressed

1 the importance of having an independent person such as a former City Manager or someone with
2 experience in municipal law act as the investigator.

3
4 Council Member Sandford asked for an estimate of how much the process could cost. Mr. Reischmann
5 said that he could not provide that because there are too many variables involved.

6
7 Vice Mayor Allebach stated, "Let's make it end. We can talk about it in generalities, let's make this end
8 so we can move forward and do the business of it." He said that he has received a number of emails and
9 has heard allegations that Council Member Abraham has overstepped his position as a Council Member
10 in directing staff directly instead of the City Manager. He stated, "Those are questions that have been
11 emailed to me by a number of people."

12
13 **Vice Mayor Allebach moved to discuss the allegations against Council**
14 **Member Abraham, seconded by Council Member Sherrill.**
15

16 Council Member Laputka said that it is not weighing on him, although it has been a concern. Vice
17 Mayor Allebach expressed that he felt it would be hard to prove any of the allegations of Charter
18 violations and said that he felt they were simply "mistakes." He suggested that it would not be worth
19 the investigation.

20
21 Council Member Sherrill recalled that a citizen came forward at the last meeting and read a lengthy
22 letter into the record. He stated, "A lot of accusations and emails and talks have been going on between
23 Council Member Abraham and city staff by-passing the City Manager and being called on it on many
24 occasions by then-manager John McCue." Council Member Sherrill noted that Council Member
25 Abraham is still trying to obtain information from employees about Mr. McCue even after he is gone.
26 He said that he has seen numerous emails between Council Member Abraham and staff and alleged that
27 his actions have constituted a violation of the charter. Council Member Sherrill stated, "Many times
28 he's told them he's their boss when he's not. He's trying to run the police department which he has no
29 right to do. He's a City Council Man, he's not God and I think that we need to have some sort of a
30 decorum the way the Council's going to act. Right now, he's the only one that's doing it." Council
31 Member Sherrill noted that the City has a contract with Mr. McCue that prohibits the Council from
32 doing anything to "cause him any kind of hardships and he can't do anything against this City or we
33 could reciprocate." Council Member Sherrill stated, "He's putting us in a position for a pretty good
34 lawsuit." He spoke in support of an investigation and stated, "Either he's going to bring himself in line
35 or we will remove him from office and that's what we need to get across." Council Member Sherrill
36 suggested that Council Member Abraham's requests for information were excessive and should have
37 been requested through the City Manager.

38
39 Council Member Sandford said that he has had "some dealings" with City employees and Mr. McCue
40 and he said that Mr. McCue made it clear to him that if he needed information from someone, he was
41 free to go and get it.

42
43 Council Member Mahoney said that he did not believe that is what Council Member Sherrill is talking
44 about. He noted that everyone has "the right to access to information" and "the right to conduct an
45 investigation." He stated, "A Council Member who is investigating is not doing anything wrong." He
46 said that what a Council Member can't do is interfere with the management and staff. Council Member
47 Mahoney said that he would prefer to have this type of discussion in private, however, that is not
48 allowed under the sunshine laws. Council Member Mahoney stated, "John McCue is gone." He urged

1 Council to “focus on the business of the City.” In conclusion, Council Member Mahoney stated, “Every
2 Council Member has an obligation to investigate, but they need to do it within proper channels and it
3 has to be an investigation. There has to be some public benefit coming out of this and I would suggest
4 that some emails I, personally, can’t observe any public benefit from those emails.”
5

6 Council Member Laputka noted that there is a new City Manager and he may have different policies.
7 He observed that Mr. McCue’s policy was “pretty much open door.” Council Member Laputka said that
8 he felt it is important for everyone to understand the policies. He asked Mr. Murray to respond.
9

10 Mr. Murray stated, “This City and this City staff has nothing to hide.” He said that there is “a process
11 which can easily be abused.” Mr. Murray said that he does not discourage Council from seeking
12 information, however, he does discourage what appear to be “meaningless inquiries to no purpose.” He
13 said that he has instructed his staff that those inquiries will come through him and he asked Council to
14 honor this request for the time being.
15

16 Council Member Laputka stated, “If we have a problem with that, we discuss it as a Council. Do we all
17 agree to that?” Mayor Strickland, Vice Mayor Allebach, and Council Members Mahoney and Sherrill
18 indicated their agreement. Council Member Mahoney urged Council to be aware of the difference
19 between a request and an editorial statement.
20

21 Council Member Mahoney said that while he agrees with the previous discussion, the Charter does not
22 require him to go through the City Manger if he doesn’t want to. Mr. Reischmann concurred and read
23 from Section 6.01 of the Charter.
24

25 Mr. Reischmann interrupted a statement by Council Member Sherrill and cautioned him that if it is
26 Council’s desire to proceed with an investigation and/or charges against a specific Council Member, due
27 process must be afforded to the accused before specific accusations are made.
28

29 Council Member Laputka questioned whether the Council’s Rules & Procedures could “fill in the gaps”
30 regarding any uncertainty over which behaviors are appropriate and which are not. Mr. Reischmann
31 responded that they only refer to meetings. Vice Mayor Allebach suggested that this may be something
32 that could be clarified in a policy for Council.
33

34 Mr. Murray asked Council Member Mahoney whether making a request to staff could not be construed
35 as giving direction. Council Member Mahoney said that it could and suggested that this may be an issue
36 that Council needs to address and decide on. Mr. Murray explained the various ways in which conflict
37 could be caused by Council going directly to staff with requests. He stated, “When you ask directly for
38 information from an employee of the City, that is in my eyes, can easily be interpreted as giving them
39 direction to furnish that information. So, it’s a very gray area.”
40

41 Mayor Strickland asked Council Member Abraham if he wished to speak. Council Member Abraham
42 responded that he would respond “when the due process starts.”
43

44 Mayor Strickland said that he felt it is important to “move ahead” with Mr. Murray as the new Manager
45 and to follow his leadership. He stated his understanding that at the present time, Mr. Murray wants all
46 requests for information to go through him. He said that he will support that position. He expressed his
47 support for Mr. Murray. Mr. Murray reiterated the reasons he is requesting this procedure now.
48

Motion failed by 1/6 roll call vote with Council Members Mahoney, Laputka, Sandford, Abraham, Mayor Strickland and Vice Mayor Allebach voting "no."

9. APPROVAL OF MINUTES: September 23, 2008 Regular Meeting

Council Member Laputka moved to approve the minutes of the September 23, 2008 Regular Council Meeting, seconded by Vice Mayor Allebach and passed by a unanimous 7/0 voice vote of the Council.

10. COUNCIL COMMENTS:

Council Member Mahoney stated, "We need to be respectful of one another. There's not enough respect here."

Vice Mayor Allebach stated, "Let's build on moving forward..."

Council Member Abraham expressed his concern that the 2008/2009 budget for the City is not on the web site. He said that he was able to access Port St. Lucie's budget on their web site on October 1st.

Mayor Strickland said that he attended a dedication and ribbon cutting ceremony for a new van purchased and donated to the Disabled American Veterans Greater Daytona Chapter 84 in Holly Hill. He noted that each municipality partnered with the County in purchasing this van for veterans. The veterans use the bus to transport veterans to medical facilities outside Volusia County and to transport lab materials to Gainesville and Jacksonville. The Mayor remarked that he also learned that the Disabled American Veterans Greater Daytona Chapter is losing revenue from Bingo due to the electronic gambling establishments that are opening throughout the State. He stated, "Bingo attendance is way down and their income is way down."

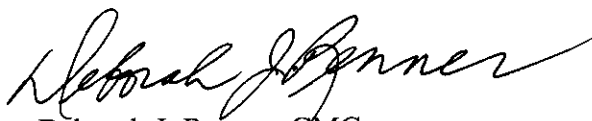
Mayor Strickland said that he attended a breakfast at Public Works on Friday. He said that Mr. Johnson read a letter and that it was well received. In addition, Mayor Strickland said that he attended the Fire Department's Open House on Sunday and that it was a great event and the kids had a great time. The Mayor noted that he had inadvertently misplaced a speaker request form submitted by Bob Storke at the last Council meeting. He offered his apologies.

11. ADJOURNMENT:

There being no further business, Mayor Strickland adjourned the meeting at 10:06 p.m.

RESPECTFULLY SUBMITTED:

APPROVED ON:



Deborah J. Renner, CMC
City Clerk

10-28-08

1 **MINUTES OF THE WORKSHOP MEETING** of the City Council of the City of Orange City, Florida,
2 held on Tuesday, October 7, 2008 at 6:00 p.m. in Council Chambers, 201 N. Holly Avenue, Orange City.

4 **CALL TO ORDER:** The meeting was called to order at 7:00 p.m. by Mayor Strickland and roll call was
5 taken.

6
7 **ROLL CALL**

8
9 **PRESENT:** Mayor Harley Strickland; Vice Mayor Jeff Allebach; Council Members; Tom Laputka, Tom
10 Abraham, Don Sherrill, Jim Mahoney; Interim City Manager Chester Murray; City Attorney
11 William Reischmann; City Clerk Deborah Renner

12
13 **ABSENT:** Council Member Donald Sandford

14
15 **1. DISCUSS CITY COUNCIL RULES AND PROCEDURES**

16
17 Council Member Laputka commented that the City has a new City Manager and that he felt that made this an
18 appropriate time to review the Rules & Procedures. He suggested that Mr. Murray may have some input on
19 the review.

20
21 Mr. Reischmann advised that the Rules & Procedures address how council meetings are conducted. He
22 noted that some of the topics listed in the agenda memo are not related to the meetings. Mr. Reischmann
23 advised that these issues could be addressed in an ordinance which would then be codified and made part of
24 the code book.

25
26 Mayor Strickland said that he found it confusing when he tried to review the information in the agenda
27 packet. He said that this is what prompted him to generate the memo he distributed at the beginning of the
28 meeting (a copy of which is attached and becomes a permanent part of these minutes).

29
30 Mr. Reischmann addressed the issues enumerated in the agenda memo (a copy of which is attached and
31 becomes a permanent part of these minutes) as follows:

32
33 Item #1: Clarification to the agenda process (i.e., placing/removing items from the agenda.)
34 He said that this item would be very appropriate for discussion and/or revision in this review.

35
36 Item #2: Do any of the current procedures conflict with Roberts Rules of Order?
37 Mr. Reischmann advised that there is language in the Ormond Beach Rules & Procedures which addresses
38 this.

39
40 Item #3: Statutory requirements vs. parliamentary requirements
41 Mr. Reischmann advised that this topic could prompt very lengthy discussion.

42
43 Item #4: Procedure for addressing absences.
44 Mr. Reischmann noted that this is not addressed anywhere within the current Rules & Procedures. He
45 advised that none of the sample documents addressed this topic either. Mayor Strickland noted that the
46 Charter provides that a member who leaves the dais during a meeting can be fined \$100. He questioned how
47 these brief absences should be handled.

48 Mr. Reischmann commented that Item 6. is "clearly within the scope" of the current Rules & Procedures.

1 He said that Items 7 & 8 don't directly impact how meetings are run, however, Council may want to review
2 for the purpose of clarifying or drafting legislation or policy to address the concerns raised in these items.

4 In regard to the issues raised by the Charter Review Committee, Mr. Reischmann suggested that Items (a)
5 Detailed process for filling a vacancy and (b) Detailed process for placing items on the agenda could be
6 appropriately addressed in the Rules & Procedures, while (c) Providing for access to public records
7 electronically and/or via the website should be addressed elsewhere.
8

9 Council Member Sherrill noted again that these issues had arisen during the Charter Review discussions and
10 he stressed that this is the time to address them.

11
12 Mr. Murray noted that policies do exist for issues such as purchasing, travel, and investments. Mr.
13 Reischmann reiterated that the Rules & Procedures deal only with the conduct of City Council meetings.
14

15 Mayor Strickland said that he would like to begin the discussion with Item 6, Citizen Comments. He noted
16 that the current rules provide that if an item is not on the current agenda, it can be placed on the agenda by
17 motion.
18

19 Council Member Mahoney expressed his understanding that Citizen Comments was the time for citizens to
20 speak on items that are not on the agenda and expanded on that to mean it was granted because they would
21 be given the opportunity to speak on items on the agenda at the time they came up for council consideration.
22 He said that when he began attending Council meetings, this resulted in having no opportunity for input
23 unless there was a public hearing for second reading of an ordinance.
24

25 Council Member Sherrill responded that this is addressed in Section Six on Page 5 of the Rules and
26 Procedures, specifically Section A. Vice Mayor Allebach referenced Section F which provides that persons
27 may address the Council on matters under consideration which he interpreted to mean anything else that is
28 on the agenda. Council Member Mahoney noted that permission to speak must be granted by the presiding
29 officer.
30

31 Mr. Reischmann noted that virtually all cities have a "Citizen Comments" section on their agenda and a
32 procedure that is also written in their "Rules & Procedures." He noted that Ormond Beach, Daytona Beach
33 Shores and Palm Coast provide an opportunity for public input after Council discussion has concluded.
34 Following public input, the item returns to the Council for further discussion and action. Mr. Reischmann
35 spoke in support of this system, saying that it seems to flow smoothly and quickly. He advised that there are
36 certain circumstances such as Public Hearing and "quasi-judicial matters" which require a bit more formality
37 regarding citizen input. He said that most other cities follow this method for citizen input on every agenda
38 item. In response to a comment from Mayor Strickland, Mr. Reischmann said that this applies only to
39 regular meetings, not workshops. The Mayor stated that he would not open the floor to comment from the
40 public for anything not on the agenda because tonight's meeting is a Workshop. In response to a request for
41 clarification, Mr. Reischmann advised that the current Rules & Procedures do not require a motion to accept
42 public comment. He further advised that there is no requirement to accept public input during a workshop.
43 He noted that the city of Palm Coast has workshop meetings every other week to review upcoming agendas
44 and that public comment is not allowed at those meetings. He clarified that if it is Council's direction that
45 the City Manager or City Clerk make changes to the Rules & Procedures, those changes would be
46 considered at a regular meeting at which time citizen input would be allowed. Mr. Reischmann said that it is
47 up to the Mayor whether he wants to accept public input tonight.
48

49 Council Member Sherrill suggested that Section Six in the current Rules & Procedures already clearly gives
50 a procedure for public comment.

1 Vice Mayor Allebach said that he had no objection to allowing public comment tonight.

2
3 Mr. Reischmann advised that if it is Council's intention to give citizens the right to speak on any issue on the
4 agenda, changes would be needed to Item Six "A" of the Rules & Procedures. He recommended that Item
5 "A" be broadened.
6

7 Vice Mayor Allebach maintained that Item 6 "F" allows for public participation on any issue under
8 consideration by the Council.
9

10 Mr. Reischmann clarified that if it is the intention of Council to allow anyone to speak on any issue, the
11 requirement for obtaining the permission of the presiding office should be eliminated. He stated, "I would
12 respectfully submit that that is a slight but real distinction between what we currently have in our Rules and
13 Procedures and what some other cities have in their Rules and Procedures." Mr. Reischmann noted a recent
14 conflict regarding an individual who wished to speak but was not allowed to in accordance with the City's
15 Rules & Procedures. He suggested that eliminating the requirement for permission in this area would
16 eliminate such conflicts in the future. Council Member Mahoney said that he would like for that change to
17 be made. Council Members Sherrill, Laputka and Vice Mayor Allebach concurred. Council Member
18 Abraham noted that this matter is addressed in detail on pages 8 and 9 of Palm Coast's Rules & Procedures.
19 He said that he was "impressed" by their language and said that changes were needed in Orange City's
20 document. Mr. Reischmann said that he would make the necessary changes.
21

22 Council Member Laputka said that a couple of months ago, he was unclear about the procedure for having
23 items placed on the agenda and suggested that this be the next topic for discussion.
24

25 Mayor Strickland spoke in support of a Council Member bringing up an item they would like to have placed
26 on a future agenda so that it can be discussed and approved by the rest of Council. Mr. Reischmann said that
27 Palm Coast has such a procedure in their Rules, Item V. "J" on page 5. Mayor Strickland said that he felt
28 that was a good example. Mr. Reischmann elaborated that in order for a Council Member in Palm Coast to
29 place an item on the agenda, he must have the consensus of Council, however, this procedure is not
30 mandatory. Council Member Laputka questioned whether this would preclude a Council Member from
31 placing an item on the next agenda in between meetings. Council Member Mahoney suggested that a certain
32 amount of time is necessary for Council to get prepared before an item is brought to them on the agenda.
33 Mr. Murray said that the consensus of the Council should be to direct the City Manager to place the item on
34 the next agenda so that he has time to prepare the background information for the item. He stressed that it is
35 imperative for it to go through the City Manager in order to ensure that erroneous information is not
36 provided to Council. He also stressed the need for there to be a consensus among the Council regarding
37 placing an item on the agenda so that it doesn't put the Manager in the position of taking direction from just
38 one individual.
39

40 Mayor Strickland agreed with Mr. Murray, but he also felt that if the item was simply brought forward for
41 discussion, not action, there did not necessarily have to be consensus. Mr. Reischmann noted that many
42 issues take form as discussion items, which then result in direction from Council to return them for
43 consideration as an ordinance or resolution.
44

45 Council Member Laputka questioned during which point on the agenda future items should be brought up by
46 individual Council Members. Mr. Murray responded that it could be during the City Manager's report. Mr.
47 Reischmann advised that there is more than one way to bring items forward for the agenda. He suggested
48 that the Rules & Procedures could be amended to reflect that this method is acceptable. Mr. Murray
cautioned Council not to fall into the trap of having to vote on an item that was just brought up and had not

1 been researched. Mayor Strickland concurred, however, he said that if a Council Member has an issue they
2 want to discuss, they should be able to put it on the agenda.

4 Mr. Reischmann noted that in Palm Coast, a single Council Member could not place an item on the agenda
5 without the agreement of a majority of the others. Mr. Murray expressed that he felt there was ample
6 opportunity within the current agenda structure for Council Members to bring forward requests for future
7 agenda items.

8
9 Council Member Sherrill said that a Council Member could bring an item to the Manager at any time and
10 request that it be placed on the upcoming agenda as a discussion item. Mr. Reischmann advised that the
11 current Rules & Procedures do not set forth a process for putting items on the agenda. He observed that the
12 city of Deltona gives the Manager the discretion to pull items from the agenda if it is felt they are
13 inappropriate or incomplete.

14
15 In response to a request for clarification from Council Member Laputka, Mr. Reischmann stated that the
16 current procedures allow an item to be added to the agenda at the beginning of a meeting by motion and
17 subsequent vote. He cautioned that this could only be done in the event that no additional information
18 regarding the item was needed in order to take action on it. Vice Mayor Allebach noted that in this case, if
19 one Council Member felt that additional information was necessary it would be enough to postpone the item
20 to a future date. He said that presently, if a Council Member wants an item on the agenda, they simply tell
21 the Manager and he will put together an item for the next agenda. Mr. Murray agreed and said that he was
22 not aware of any problems with this system. Mayor Strickland responded that the only problem is that the
23 system has never been formalized. Mr. Murray said that the biggest concern for the Manager and staff is
24 that there is enough information available for Council to make an informed decision. He said that there is
25 nothing to prevent a Council Member from submitting an item at noon on Wednesday and demanding that it
26 be placed on the agenda. Vice Mayor Allebach suggested that a form be submitted to the City Manager ten
27 working days prior to the agenda deadline requesting that an item be placed on the next agenda.

28
29 Mayor Strickland asked the City Attorney if he could develop new language to address the concerns that
30 have been raised. Mr. Reischmann stated his understanding that Council is seeking to find a method to put
31 an issue on the agenda in a manner such that the City Manager has ample time to prepare the item, while also
32 facilitating the Council Member's request in a timely manner. He suggested that a deadline of twenty-four
33 hours prior to the publication of the agenda could be imposed on the request. Another option would be to
34 request that an item be placed on the next agenda during the "Reports" portion of the meeting. This option
35 could include a requirement for a consensus, majority vote, or solely on the authority of being an elected
36 official. He said that some cities allow a Council Member to submit an item seventy-two hours prior to a
37 meeting. The next issue is the actual process for placing the item on the agenda. Mr. Reischmann noted that
38 the agenda for the next meeting has already been completed, but if a Council Member wished to add an item,
39 they could do so up until 4:00 on Wednesday.

40
41 Mr. Reischmann noted again that many cities require that a request for a future agenda item be brought up
42 during a regular meeting. Council Member Mahoney asked "What's wrong with that approach, gentlemen?"
43 He said that this would dispel the feeling that the City Manager could act as a "gatekeeper" and restrict
44 Council from accessing the agenda if he so desired. He said that the only issue that would remain with this
45 regulation would be whether or not Council requires the agreement of a majority in order for the issue to
46 move forward to the agenda. Council Member Mahoney asked, "To what extent is that deficient in
47 addressing our needs." Vice Mayor Allebach responded that it is not deficient, however, in the current Rules
48 & Procedures, the process is not outlined in detail. Mayor Strickland concurred. Mr. Reischmann agreed
49 that the current Rules and Procedures do not offer a lot of guidance regarding placing items on the agenda.
50 Mr. Murray said that staff would develop a process for Council's consideration.

1 Vice Mayor Allebach returned discussion to Item 2 (see below):
2

3 Item #2: Do any of the current procedures conflict with Roberts Rules of Order?
4

5 Mr. Reischmann spoke in support of the language contained in Section 2.11 of the City of Ormond Beach's
6 Rules & Procedures.

7 **It was the consensus of Council to adopt the language found in the Rules**
8 **and Procedures in Section 2.11 of Ormond Beach.**
9

10 Mr. Reischmann recapped the issues that had been covered thus far: Citizen Comments; relationship
11 between Council's Rules and Roberts Rules of Order; and the agenda process.
12

13 Mr. Reischmann discussed Item 3; Statutory Requirements versus parliamentary requirements stating that if
14 a statutory procedure is provided, it must be followed.
15

16 Item #4: Procedure for addressing absences.

17 Mr. Reischmann noted that this issue had surfaced recently. He said that he did not see where this issue
18 could be appropriately addressed in the Rules and Procedures. Council Member Sherrill suggested that it
19 could be handled by Resolution or Ordinance. Mr. Reischmann responded that the Attorney General's office
20 provides "some guidance" concerning "excused" and "unexcused" absences. After discussion among the
21 Council, it was concluded that absences could be excused by the Council, however, no process currently
22 exists to do so. Council Member Sherrill stated that it needs to be clarified because there is someone at the
23 present time who is "abusing the system." Mayor Strickland said that he would be interested in how this
24 issue is handled in other cities. He noted that absences are "excused" at VCARD meetings simply by a
25 phone call.

26
27 Mr. Reischmann said that he reviewed the procedures from other cities which were presented with the
28 agenda packet tonight and could find no guidance for this issue. He cautioned that "there is a process and
29 then there's substance" and said that it is important to make the distinction. Mr. Reischmann said that case
30 law does exist from the Attorney General's office to provide guidance on how to do that. Mr. Reischmann
31 discussed procedural options. He said that it could be discussed and determined at the time of the roll call
32 based on whether or not the absent Council Member requested that the absence be excused.
33

34 Council Member Sherrill said that he would like the "four meeting" requirement broadened to include
35 regular or special meetings as opposed to only regular meetings as currently written. He said that this issue
36 could be changed in the current charter amendment.
37

38 Vice Mayor Allebach noted that a serious illness or injury could result in a two-month absence from
39 Council. He said that the procedures need to be clarified to identify when Council votes to deem an absence
40 excused. Mr. Reischmann said that under the current provisions, a Council Member could miss four
41 meetings and then seek to retroactively have one of them excused. Mr. Murray observed that the main issue
42 seems to be whether to make the decision whether to excuse an absence immediately at the time of the
43 absence, or make it a cumulative issue and then decide when four unexcused absences have been reached.
44 He said that he felt it should take Council action to make a determination on the night of the absence as to
45 whether it is excused or not. Mayor Strickland asked whether the Council wishes to make a ruling on that or
46 let a notification by the absent Council Member be sufficient to constitute an "excused" absence. Mr.
47 Murray advised that is Council's determination to make.
48

49 Council Member Sherrill spoke in support of a majority vote by Council. Vice Mayor Allebach said he did
50 not support an automatic "excused" just based on a telephone call that the Member was not going to be there.

1 Council Member Sherrill suggested that it should be determined at the following meeting. Mr. Reischmann
2 noted that there are many situations which could prompt an absence, such as a car accident on the way to the
3 meeting. Mayor Strickland requested that staff provide two or three different options on this issue.
4

5 Mr. Reischmann summarized, stating, "You're talking about you're giving your staff, your City Clerk and
6 your City Attorney direction to come up with an ordinance to amend your current code to provide guidelines
7 for determination and implementation of your Charter dictates."
8

9 Council Member Allebach suggested that this would also be a good time to address the process to replace a
10 Council Member who was being removed.
11

12 Council Member Sherrill stated, "The situation we've got here tonight, that gentleman should have been at
13 this meeting, this is a special meeting we called. Now, he's used the system already, came to a meeting and
14 he's back clear again. Now all of a sudden, he misses this meeting and I'll be guaranteeing you he'll
15 probably miss the next meeting, too." Mr. Reischmann noted that tonight's meeting is a workshop. Council
16 Member Sherrill responded, "I realize that. Special meetings, workshops, it should all be the same." Mayor
17 Strickland stated, "But that's not what the Charter says." Council Member Sherrill responded, "I thought
18 we were talking about changing it." Mayor Strickland stated, "I would like to see us at least have some
19 notion as to what's the procedure to get an excused absence."
20

21 Mr. Reischmann suggested that an amendment to Chapter 2 of the code could be adopted that gives Council
22 the authority to determine an excused or unexcused absence which determination shall be made at the
23 meeting or the meeting thereafter. Mr. Murray noted that if the absence was considered at the meeting after,
24 it would give the absent Council Member five meetings rather than four. He suggested that an absence could
25 generate an automatic agenda item for the next meeting to require Council to vote on excusing the absence.
26 Council Member Laputka advised that would give the City Manager time to investigate the absence. Mr.
27 Reischmann said that this system could be included in the revised Council Rules and Procedures under
28 "Agenda". Mr. Murray noted that the only problem with this method would be that it would be the fifth
29 meeting after the four absences before the seat could be declared vacant. Mr. Reischmann suggested that
30 this consideration could take place following the roll call.
31

32 Mayor Strickland asked whether it would be possible to find out if any other cities have a provision similar
33 to this and if so, how is it handled. Vice Mayor Allebach said that the Attorney General has information
34 regarding the classifying of absences. Mayor Strickland said that it would be helpful to have that
35 information.
36

37 Council Member Mahoney referred to Section 2.5 of the Ormond Beach Rules & Procedures which deals
38 with written comments when absent from a meeting. He said that he was in this situation recently and that
39 he had called the City Manager and asked him to read his comments at the meeting. He asked if this was
40 acceptable and questioned whether it should be added as a procedure. Mr. Murray responded that he would
41 not see any City Manager having a problem with accommodating such a request from a Council Member.
42 Mayor Strickland agreed and said he did not feel it needed to be included.
43

44 Mr. Reischmann raised the issue of email to or from city council members. He stated his understanding that
45 the City does have an internal policy regarding email for employees. He said that this issue touches on
46 adherence to both Public Records Law and the Sunshine Laws. Mr. Reischmann said that other cities have
47 had issues when their elected officials use their home computers for official emails and have not taken steps
48 to separate the two. He said that response to a public records request could result in the Council Member
49 having to produce all of his/her emails. Mr. Murray responded that each Council Member has the City's
50 email system available on their home computers which produces record copies on the City's file server. He

1 noted that caution must be taken regarding communication between Council Members. Mr. Reischmann
2 advised that this should not take place. Council Member Mahoney said that it would be acceptable to send
3 an email to another Council Member, however, that Council Member could not respond. Mr. Reischmann
4 clarified that violations occur when there is a "give and take" of information.

5
6 Mr. Reischmann advised that he did not believe the Council Rules & Procedures was the appropriate place to
7 deal with the guidelines for filling a vacancy on the Council. Mayor Strickland concurred. Mr. Murray
8 suggested that it needs to be included in the code.

9
10 Council Member Mahoney clarified it was decided that Items 7. Policy on unsubstantiated allegations of
11 violations, and 8. Policy on requesting information from staff, should be addressed by ordinance and he
12 asked how discussion and action on these issues would proceed? Vice Mayor Allebach suggested that
13 perhaps this issues should be the subject of another workshop. Mr. Reischmann concurred that these two
14 issues do not pertain to how meetings are run. Mayor Strickland suggested that Mr. Murray suggest some
15 solutions to these issues and return with recommendations for Council. Mr. Reischmann said that the subject
16 could be addressed further in another workshop, or a special meeting could be called, or the matter could be
17 placed on a regular meeting agenda as a discussion and action item.

18
19 **2. ADJOURN**

20
21 The meeting was adjourned at 8:31 p.m.

22
23 Respectfully Submitted:

Approved on:

24
25 

26
27 Deborah J. Renner, CMC
28 City Clerk

10-28-08
