

1 **MINUTES OF THE REGULAR MEETING** of the City Council of the City of Orange City, Florida,  
2 held on Tuesday, October 24, 2006 at 7:00 p.m. in Council Chambers, 201 N. Holly Avenue, Orange  
3 City.

4

5 **CALL TO ORDER**

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

8

9 **ROLL CALL**

10

11 **PRESENT:** Mayor Albert T. Erwin; Vice-Mayor Anthony R. Yebba, Council Members Chuck Abell,  
12 Jeff H. Allebach, Donald C. Sherrill, Joelle R. DeVane, Jim Mahoney; City Manager  
13 John. J. McCue; City Attorney William Reischmann; City Clerk Deborah Renner

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15 The Invocation was given by Vice-Mayor Yebba, followed by the Pledge of Allegiance.

16

17 **1. PRESENTATIONS: Proclamation – National Save for Retirement Week**

18

19 Mayor Erwin read a proclamation into the record declaring the week of October 22<sup>nd</sup> through October  
20 28<sup>th</sup> as “National Save for Retirement Week” in the City of Orange City.

21

22 **2. CITIZENS COMMENTS:**

23

24 Betty Drees Johnson, 722 N. Arlington Avenue, DeLand, came forward and distributed a letter to  
25 Council from The League of Women Voters of Volusia County, (a copy of which is attached as a  
26 permanent part of these minutes). Ms. Johnson read the letter for the record, requesting that Orange City  
27 not take part in the campaign against the proposed County Charter amendments.

28

29 Thomas Abraham, 1065 S. Volusia Avenue, B-5, came forward and noted that October 24<sup>th</sup> is “United  
30 Nations Day.” He stated that the United Nations Charter was adopted 61 years ago. Mr. Abraham stated  
31 that he “tips his hat” to the League of Women Voters of Volusia County. Mr. Abraham said that the  
32 United Nations Charter contains provisions to protect the planet Earth and the environment. He said that  
33 he read an article about pollution and the effect it has on the oceans. Mr. Abraham expressed his opinion  
34 that the County Charter amendments are to protect the environment and to make cities become more  
35 responsible in their growth and to prevent pollution of rivers and to stop the death of fish in the ocean.  
36 He stated, “This is all about nature and protecting mother nature, this is not about consolidation of  
37 power.” Mr. Abraham said that he is campaigning for a “yes” vote on all of the issues mentioned by the  
38 League of Women Voters. He urged everyone to plant a tree.

39

40 **3. CONSENT AGENDA:** None at this time.

41

42 **4. ORDINANCES – FIRST READING:**

43

44 **A. ORDINANCE NO. 280:** An ordinance of the City of Orange City, Florida; amending  
45 Policy #03-04, Compensation, establishing a Step Pay Plan, and amending Policy #04-07,  
46 Retirement Program, of the City’s “Personnel Policies and Procedures Manual”;  
47 containing codification and repealer provisions, a severability clause and providing for an

1 effective date.

2  
3 **Council Member Sherrill moved to adopt Ordinance No. 280 on**  
4 **first reading, seconded by Council Member Abell**  
5

6 Elaine Hart, Human Resources Manager, came forward and explained that the intent of this ordinance is  
7 to update the Personnel Policies and Procedures Manual to reflect the change to the FRS retirement plans  
8 and the recently adopted step pay plan.  
9

10 Council Member Allebach inquired about the vesting schedule discussed in Section 4.1 and 4.2 of the  
11 Benefits Policy. Mr. McCue explained that the vesting schedule for the FRS Pension and the FRS  
12 Investment Plans are different.  
13

14 **Motion passed by unanimous 7/0 roll call vote of the Council.**  
15

- 16 **B. ORDINANCE NO. 284:** An ordinance of the City of Orange City, Volusia County,  
17 Florida; to delete references to “local occupational license tax” and replace with “local  
18 business tax”; to delete “occupational license” and replace with “local business tax  
19 receipt”; amending orange city code Chapter 8, Licenses, Sections 2.5-6, 2.5-35, 2.5-44,  
20 Section 4-46, Section 5.5-1, Section 6-33, Section 7.5-36, Appendix A, Sections 2.2,  
21 8.7.13(a)(7), 8.7.21(c), and Appendix A, Section 8.7.13(b)(8); providing for codification,  
22 conflicting ordinances, severability, and setting an effective date.  
23

24 **Council Member Abell moved to adopt Ordinance No. 284 on**  
25 **first reading, seconded by Vice-Mayor Yebba.**  
26

27 William Reischmann, City Attorney, came forward and acknowledged that his office worked with Ms.  
28 Renner, City Clerk in preparing this ordinance.  
29

30 Mr. Reischmann reported that the State Legislature passed a bill changing the terminology in Chapter 205  
31 of the Florida Statutes referring to “occupational license taxes” to “local business taxes.” He stated that  
32 that the purpose of this ordinance is to make sure that City code is consistent with the revisions to  
33 Chapter 205.  
34

35 Mayor Erwin noted that this new law clarifies that cities are not regulatory bodies for businesses; all they  
36 do is collect a tax allowing businesses to operate within their jurisdiction.  
37

38 Mayor Erwin inquired about the Exemptions in Section 2.8.2. Ms. Renner responded that FL Statute 205  
39 is very clear about entities that are statutorily exempted from paying business taxes. These include non-  
40 profit organizations, churches, etc. Mayor Erwin asked if the business tax inspector, mentioned in  
41 Section 3, 8-4, was to make sure a business has a proper tax receipt posted. Mr. Reischmann responded  
42 in the affirmative and reiterated that nothing has been changed by the new law, it is simply a word  
43 substitution in the ordinance. The process is the same, however, the intent is that it has clarified the  
44 perception.  
45

46 Mayor Erwin referenced Section 15 of the ordinance which amends, Chapter 2.5, Section 2.5-35 e, and  
47 asked what the definition of an adult motel was. Mr. Reischmann responded an adult motel is a short-

1 term housing establishment where activities occur that fall within the definition of adult activity.

2  
3 Mayor Erwin asked whether the “Annual employee license fee” referenced in Section 16 of the ordinance  
4 amending Section 2.5-44 of the Code should be changed to tax fee? Mr. Reischmann responded that the  
5 only thing changing is all references to the occupational license. He noted the City does not want to  
6 delete these sections because the adult entertainment regulations impose a regulatory license fee for  
7 employees.

8 **Motion passed by unanimous 7/0 roll call vote of the Council.**

9  
10 **5. PUBLIC HEARINGS/ORDINANCES – SECOND & FINAL READING:**

11  
12 A. **ORDINANCE NO. 279:** An ordinance of the City of Orange City, Volusia County,  
13 Florida; amending Orange City Code Appendix A, Zoning Ordinance as adopted by  
14 Ordinance No. 157, amending Chapter 2, Section 2.2., Specific Terms Defined, amending  
15 the definition of “Hotel” to delete the reference to “Tourist Court” and to create a new  
16 definition “Tourist/Travel Court”; amending Section 8.6.1 Schedule of Zoning District  
17 Permitted and Conditional Uses; providing for conflicting ordinances and setting an  
18 effective date.

19  
20 **Council Member DeVane moved to adopt Ordinance No. 279 on**  
21 **second reading and final reading, seconded by Vice-Mayor Yebba.**

22  
23 Mayor Erwin opened the Public Hearing by asking if anyone wished to speak in favor of or in opposition  
24 to the proposed ordinance. No one appeared. The Mayor closed the Public Hearing.

25  
26 Mr. McCue asked the City Attorney whether landlord/tenant statutes would apply in the event a tenant  
27 refused to leave at the end of the maximum, three-month, length of stay. Mr. Reischmann responded that  
28 it would depend on the contract that the owner of the property enters into with the tenant. It would be up  
29 to the owner of the tourist court to make sure that any stay would be consistent with city code. He  
30 advised that any stay greater than the normal one to three days would potentially place them under the  
31 provisions of Chapter 83 of the FL statutes governing landlord/tenant disputes. Mr. McCue suggested  
32 that it is not the length of the stay that would be the determining factor. He advised that nothing in City  
33 Code can change the statutory relationship between tenant and landlord as it is a civil process.

34  
35 Council Member Mahoney inquired if Council should consider the three-month period and reconcile that  
36 with the duration that establishes tenant rights. Mr. Reischmann responded that City Code is very clear  
37 that this section addresses a transient situation, not permanent residency. He said that state statute always  
38 prevails over the City’s rules in the event of a conflict. Mr. Reischmann clarified that if the owners of the  
39 property are granted a conditional use permit, they could never rent the room for a period greater than  
40 ninety days. He stated, “I can tell you there’s nothing in Chapter 83 that’s going to preempt that.”

41  
42 Council Member Mahoney clarified his question by stating, “My concern simply was we have a three-  
43 month limitation and if someone were to reside there for three months, do they have any rights to  
44 continue their stay under any state law.” Mr. Reischmann responded that the City could initiate code  
45 enforcement proceedings at the end of 90 days. He said that the risk would not be to the City, it would  
46 be to the proprietor of the establishment. Mr. McCue noted that the eviction process in Florida takes  
47 only four weeks. Mr. Reischmann pointed out that the fine that could be assessed in a code enforcement

1 proceeding could be up to \$250 per day.

2  
3 **Motion passed by unanimous 7/0 roll call vote of the Council.**

- 4  
5 **B. ORDINANCE NO. 283:** An Ordinance of the City of Orange City, Florida; amending  
6 Chapter 2. Administration, Article IV. Code Enforcement, by amending Division 1,  
7 Section 2-135, Subsections (j) and (l) to provide for the right to request an additional  
8 hearing; containing codification and repealer provisions, a severability clause and  
9 providing for an effective date.

10  
11 **Council Member Sherrill moved to adopt Ordinance No. 283 on**  
12 **second and final reading, seconded by Council Member Allebach.**

13  
14 Mayor Erwin opened the Public Hearing by asking if anyone wished to speak in favor of or in opposition  
15 to the proposed ordinance. No one appeared. The Mayor closed the Public Hearing.

16  
17 **Motion passed by unanimous 7/0 roll call vote of the Council.**

18  
19 **6. RESOLUTIONS:**

- 20  
21 **A. RESOLUTION NO. 373-06:** A resolution of the City Council of the City of Orange  
22 City, Florida, cancelling the regular City Council Meetings scheduled for November 28,  
23 2006 and December 26, 2006; repealing all resolutions in conflict herewith and providing  
24 for an effective date.

25  
26 **Council Member Allebach moved to approve Resolution No. 373-06,**  
27 **seconded by Council Member Abell**

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

- 30  
31 **B. RESOLUTION NO. 374-06:** A resolution of the City Council of the City of Orange  
32 City, Florida, authorizing the City Manager to enter into a Highway Maintenance  
33 Memorandum of Agreement with the Florida Department of Transportation; repealing all  
34 resolutions or parts of resolutions in conflict herewith; and providing for an effective date.

35  
36 **Council Member Allebach moved to approve Resolution No. 374-06,**  
37 **seconded by Council Member Mahoney**

38  
39 Paul Johnson, Public Works Director, came forward and reported that the original agreement was a  
40 one-year term with a one-year renewal. He advised that the proposed contract would be a three-year term  
41 with a potential three-year renewal. Mr. McCue noted that the extended contract indicates that the  
42 Department of Transportation (DOT) is satisfied with work that the City is doing.

43  
44 Council Member Allebach noted the major improvement in right of way maintenance since the City took  
45 over.

46  
47 Mayor Erwin asked if the compensation of \$22,340 is adequate. Mr. Johnson responded that it is more

1 than adequate, noting that it is equal to the salary of one individual. He said the City uses about three  
2 man-days a week just to maintain US 17-92, which means the City gets two extra days a week.

3  
4 Mr. Johnson reported that he has received very positive feedback from DOT on the quality of the City's  
5 work.

6  
7 **Motion passed by unanimous 7/0 roll call vote of the Council.**

8  
9 C. **RESOLUTION NO. 376-06:** A resolution of the City Council of the City of Orange  
10 City, Florida, authorizing a donation of \$12,500, subject to certain conditions; repealing  
11 all resolutions in conflict herewith; and providing of an effective date.

12  
13 **Council Member Abell moved to approve Resolution No 376-06,**  
14 **seconded by Council Member DeVane**

15  
16 Mayor Erwin acknowledged Janet Miller, Interim President/CEO for ACT Corporation, and invited her  
17 to comment on this resolution.

18  
19 Ms. Miller, 395 S. Atlantic Avenue, Ormond Beach, came forward and stated that ACT Corporation has  
20 been in existence since 1960. She stated that ACT serves over 5,000 clients in Volusia County. Recent  
21 decisions by the State regarding funding have resulted in a decrease in funding for ACT. This loss of  
22 funding has now reached a crisis and ACT has been forced to take drastic cost-cutting measures. Staffing  
23 has been reduced from 441 employees to 300. Ms. Miller advised that the Agency is trying to sell  
24 property and vacate leases in order to cut expenses. The outpatient clinic and adult day care programs in  
25 Deltona have been discontinued. The number of case managers has been cut from ninety to four, making  
26 it difficult to provide adequate services to clients. Ms. Miller explained that reducing case management  
27 triples the chances that clients will not get the attention needed. She predicted that the impact of service  
28 cuts will decrease the quality of life in cities throughout the County. Ms. Miller stated that ACT is  
29 requesting assistance from all of the cities throughout the County, as well as additional funding

30  
31 Mayor Erwin noted that a contribution from the City would be meant to give ACT some time to get the  
32 organization refocused. The Mayor stated that Volusia County has agreed to match any contributions  
33 made by the cities.

34  
35 Mr. McCue reiterated that the County Council would match the City's \$12,500 contribution. He also  
36 stressed that the contribution is in response to an emergency request from ACT to help them through their  
37 current crisis. Mr. McCue reminded Council that the City would not be able to donate to every program  
38 that requests help.

39  
40 **Motion passed by unanimous 7/0 roll call vote of the Council.**

41  
42 BEGIN TAPE 1-B

43  
44 Mayor Erwin noted this is an urgent situation, he said there were at least two instances that have occurred  
45 in Orange City recently that may be a result of the ACT Corporation curtailing operations. Mayor Erwin  
46 thanked Ms. Miller for her dedication and wished her success in rebuilding ACT Corporation into a  
47 successful organization.

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**7. DISCUSSION AND ACTION:** None at this time

**8. REPORTS:**

A. City Manager

Mr. McCue reported that Officer Melvin has been promoted to the new Lieutenant's position in the Police Department. He said that Officer Melvin will be present at the next Council meeting.

Mr. McCue noted that Council recommended awarding the exclusive residential garbage collection franchise to Waste Management. At that time, the possibility of awarding Waste Management exclusive commercial franchise rights was also discussed as a possible way to reduce the residential costs. Mr. McCue stated that he has since found that adding the commercial franchise would require a bid process. The residential franchise agreement will be considered in November and December. When staff reviewed the commercial contracts the city currently has with five different providers, it was discovered that the contracts have a clause excluding mobile home parks. They are also excluded from the residential franchise agreement. Mr. McCue noted that the parks have been receiving service under the commercial franchise process. He said with Council's approval, staff would negotiate new commercial contracts with the current providers and bring back the residential award and the newly negotiated commercial contracts that will include the mobile home parks as commercial entities.

Council Member Abell asked for clarification as to how the process would work for the mobile home parks. Mr. McCue responded that the terms of the agreement would be negotiated by the carrier in their commercial contracts with the parks.

Mr. Reischmann explained that Chapter 6 of City Code charges the City with providing garbage pick-up service for its residents. The City has the option of either providing this service itself, or contracting with a company to provide it. He further explained the City's relationship with the mobile home parks by stating that the City will not contract directly with the parks, they will negotiate their own contract with the provider of their choice. Mr. McCue said that there will be no noticeable difference when the new contracts are signed.

Council Member Abell noted that there would be differences in the service levels in the City, advising that Orange Tree Village just went to once a week pick-ups. Mr. Reischmann responded the terms of service negotiated by the City for residential customers has nothing to do with the commercial accounts which include the mobile home parks. He said that they each negotiate their own contracts with their chosen service provider.

Council Member Mahoney asked if apartment complexes fall under the residential pickup. Mr. McCue responded that they are considered commercial, stating that the only areas that were excluded in the previous agreements are the mobile home parks.

Council Member Mahoney referenced the recent increase in water rates and stated, "I am not proposing a change because the implementation was delayed as a result of notification. However, I would envision a rate increase to be tied to consumption and not to billing." Council Member Mahoney stated that it is an issue of "fairness" and that there is an assumption that the effective date of the new rates in the ordinance

1 pertain to water consumed after that date. He stated, "When you purchase something, you know what  
2 you're paying for it. You don't consume it and then have the rates changed after the fact."  
3

4 Council Member Mahoney asked whether disclaimers are required when the City takes a position on a  
5 certain matter and advertises that position on the changeable copy sign. Mr. McCue responded that  
6 disclaimers are not required on the sign. He said that billboards and radio/tv ads are being generated by  
7 the PAC, and they will be required to use the disclaimer on those. Mr. Reischmann clarified that the  
8 disclaimer is required by Chapter 106 of the FL Statutes only in cases of paid advertising which is also  
9 defined as "electioneering communications." He said that staff confirmed this with the State Division of  
10 Elections in Tallahassee.

11  
12 Council Member Sherrill suggested that the City propose to assume maintenance on Veterans Memorial  
13 and some of the other County right of ways. Mr. McCue responded that he would speak to the County  
14 Manager tomorrow and bring it up. He said that County staff seems very reluctant to turn the  
15 maintenance over to Orange City. Mr. McCue said that staff has petitioned the County to annex their  
16 streets into the City. A further petition has been submitted to the State to annex 17-92 into the City. He  
17 said that the requests were mailed out yesterday. Mr. McCue said that if approved, the City would have  
18 "an opportunity to use a difference frame of reference in our negotiations to do the maintenance on their  
19 streets."  
20

21 Council Member Sherrill gave "kudos" to the Fire Department, Police Department, and the Deltona  
22 Honor Guard for a "superb job" at the funeral services for Amos Nettles. He said that the services were  
23 very moving. Council Member Sherrill suggested that the departments be commended by the City  
24 Manager and the Mayor.  
25

26 Council Member DeVane commented that the Nettles family was extremely grateful to the City, and said  
27 it was the most touching ceremony that they have ever been to.  
28

#### 29 B. Mayor/City Council 30

31 Mayor Erwin reported that very little business was discussed at the WAV meeting this month. The  
32 language that would allow New Smyrna Beach to withdraw from WAV was approved. He noted that  
33 New Smyrna Beach has a unique situation because the City has an independent utility commission. The  
34 revised wording will allow the New Smyrna Utility Commission to become a part of WAV. There will  
35 be no formal action taken on this matter until December because it cannot not be voted on for 60 days.  
36 Mayor Erwin advised that there will also be action regarding the future of WAV at the December  
37 meeting.  
38

39 Mayor Erwin said that at the VCOG meeting last night, there were presentations by various  
40 organizations. He noted that Jim Ryan gave an update on Emergency Management in Volusia County  
41 and advised that he would be distributing copies of Mr. Ryan's report. The Volusia Home Builders  
42 Association presented a new program that just started in Volusia called "The Builders Care." This  
43 program provides for repairs to homes where the homeowners do not have the funds needed for the  
44 repairs. Mayor Erwin said that this is a national program and the Volusia Branch is the second in the  
45 State. The Mayor advised that a copy of 2025 Long Range Transportation Plan from the MPO was  
46 distributed at the meeting and that he would obtain additional copies to be distributed to Council.  
47

1 Mayor Erwin said that there was an item on the agenda to discuss animal control, however, due to time  
2 constraints, the item was not discussed. The Mayor said that a breakdown of the cost for animal control  
3 within the various cities was distributed. He noted that Orange City's cost is the lowest in the County  
4 and that the City pays significantly less than DeBary and Deltona.

5  
6 C. City Clerk

7  
8 The City Clerk had nothing to report.

9  
10 D. City Attorney

11  
12 Mr. Reischmann reported that the Department of Community Affairs has published a Notice of Intent to  
13 find the City's Comprehensive Plan to be in compliance. In early November, the Comprehensive Plan  
14 amendment will be final and the City will be able to proceed with many of the pending developments and  
15 development orders that will allow Orange City to grow dramatically.

16  
17 **9. APPROVAL OF MINUTES:** October 10, 2006 Regular Council Meeting

18  
19 **Council Member DeVane moved to approve the minutes of the October 10, 2006**  
20 **meeting, seconded by Council Member Allebach, and passed by unanimous 7/0 voice**  
21 **vote of the Council.**

22  
23 **10. COUNCIL COMMENTS**

24  
25 Council Member Mahoney said, "It's good to be back."

26  
27 Council Member Allebach stated, "Tonight we were attacked a little bit about our stance on the charter  
28 amendments." He said that he has read the Charter amendments over and over and has not found  
29 anything in there about the County wanting to "save any green." Council Member Allebach stated,  
30 "The County wants to save their ability to control." He noted that the sprawl in Deltona was allowed by  
31 the County and stated, "If somebody wants to show me where it says they're saving green, I'll look at it."

32  
33 Mr. McCue asked for permission to speak about the funeral for the service man killed in Iraq. He stated,  
34 "For the first time in a long time I have never felt so proud to be both an American and a citizen of  
35 Orange City and the West Volusia Community as I was that Saturday morning when that poor boy that  
36 got killed over in Iraq got buried in our jurisdiction over here. And the outpouring of community support  
37 to protect that family was absolutely amazing to see and witness and I just had to say that publicly."

38  
39 **11. ADJOURNMENT**

40  
41 There being no further business, Mayor Erwin adjourned the meeting at 8:20 p.m.

42  
43  
44  
45 **RESPECTFULLY SUBMITTED:**

46  
47 Gloria J. Williams

**APPROVED ON**

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1 Deputy City Clerk