In The Matter Of:

City of Doraville

State of Georgia

City Council Meeting

July 18, 2011

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

Transcript of the meeting held at the Doraville Civic Center, 3770 Central Avenue, Doraville, Georgia, Mayor Pro Tem Maria Alexander presiding, before Theresa Bretch, Certified Court Reporter, commencing at approximately 6:35 p.m. on July 18, 2011.

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APPEARANCES:

Doraville City Council:

Maria Alexander, Acting Mayor
Councilmember Karen Pachuta
Councilmember Bob Roche
Councilmember Pam Fleming
Melissa McCain, City Clerk
Cecil G. McClendon, Jr., City Attorney
Riley McLendon, LLC
315 Washington Avenue
Marietta, GA 30060
(770) 590-5900

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P R O C E E D I N G S

MAYOR PRO TEM ALEXANDER: Meeting come to order, please.

We'll stand for the Pledge of Allegiance.

- - -

(Pledge of Allegiance)

- - -

MAYOR PRO TEM ALEXANDER: Thank you.

Call the roll, please.

CLERK McCAIN: I'll mark Councilmember Bates as not here.

Councilmember Fleming?

COUNCILMEMBER FLEMING: Here.

CLERK McCAIN: Councilmember Pachuta?

COUNCILMEMBER PACHUTA: Here.

CLERK McCAIN: Councilmember Roche?

COUNCILMEMBER ROCHE: Here.

MAYOR PRO TEM ALEXANDER: Councilmember Bates has a family issue, unfortunately. His father is in the hospital. So he may be joining us, but it will be later if he does.

Approval of the minutes.

We have minutes for June 28th, 2011.

COUNCILMEMBER PACHUTA: Motion to approve the June 28th minutes?

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MAYOR PRO TEM ALEXANDER: Second?

COUNCILMEMBER ROCHE: Second.

MAYOR PRO TEM ALEXANDER: Any discussion?

- - -

(No response)

- - -

MAYOR PRO TEM ALEXANDER: Call the roll, please.

CLERK McCAIN: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK McCAIN: Councilmember Pachuta?

COUNCILMEMBER PACHUTA: Yes.

CLERK McCAIN: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

MAYOR PRO TEM ALEXANDER: Motion to approve the minutes of June 29th?

COUNCILMEMBER PACHUTA: So moved.

MAYOR PRO TEM ALEXANDER: Second?

COUNCILMEMBER ROCHE: Second.

MAYOR PRO TEM ALEXANDER: Any discussion?

- - -

(No response)

- - -

MAYOR PRO TEM ALEXANDER: Call the roll, please.

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CLERK McCAIN: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK McCAIN: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK McCAIN: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
MAYOR PRO TEM ALEXANDER: Motion to approve the minutes of July 5th, 2011?
COUNCILMEMBER PACHUTA: So moved.
MAYOR PRO TEM ALEXANDER: Second?
COUNCILMEMBER FLEMING: Second.
MAYOR PRO TEM ALEXANDER: Any discussion?

- - -

(No response)

- - -

MAYOR PRO TEM ALEXANDER: Call the roll, please.
CLERK McCAIN: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK McCAIN: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK McCAIN: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
MAYOR PRO TEM ALEXANDER: Mr. Howe. We have a proclamation presentation today for the

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Consul-General of Colombia. Welcome.
MR. HOWE: Yes, ma'am. Thank you, Acting Mayor Alexander, for this opportunity.
It is an honor to introduce Consul-General Ana Julieta Ruiz of the Republic of Colombia.
The Republic of Colombia has undergone a remarkable transformation over the past decade, turning the tide on a long-running terrorist insurgency, making great strides in restoring security and stability to the population, and promoting crucial social investment to fight poverty.
With over 45 million citizens, Colombia, the second-largest population in South America after Brazil, has the third-largest Spanish-speaking population in the world after Mexico and Spain.
It is Latin America's oldest and most stable democracy, declaring independence from the Spanish empire on July 20th, 1810.
Colombia also has one of Latin American's oldest free-market economies that grows stronger each year. It is the U.S.'s second-largest market in Latin America for agriculture, most of which those products originate from Georgia farms.
Militarily, Colombian troops fought side by side with Americans in the Korean conflict, and today

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Colombian troops are fighting alongside American and NATO forces in Afghanistan, lending their special fighting methods and tactics that they perfected after years of fighting insurgent cartels in the nation's thickest mountain jungles.
As a tribute to one of our oldest Latin American allies and for the rich cultural gifts Colombia has given to the U.S. and to the world, Acting Mayor Alexander has declared this week Republic of Colombia Week in Doraville in honor of the July 20th Declaration of Independence.

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(Applause)

- - -

CONSUL-GENERAL ANA JULIETA RUIZ GIRALDO: Thank you very much.
On behalf of the Colombian Consulate here in Atlanta, I want to thank you for this distinction. This is a generous gesture on the part of the city of Doraville, and it comes at a good time: just before our celebration of the 201st anniversary of Colombia's independency on July 20th. It means a lot to the Colombian people to feel that our culture is valued and recognized by others.
Colombia is an extraordinary country with a

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rich cultural heritage and a stunning natural beauty, as you can see in the riches that we bring you. From the Amazon rain forest to the Andes mountains, Colombia's diversity has much to offer people from other nations.
Our presence here in the Southeast is very important for almost 250 [sic] citizens residing in the seven states covered by the Atlanta consulate. You can find Colombian contributing to all sectors of the economy in the Southeast.
Atlanta, the most prominent city within our territory, is a major hub for international affairs. We have many entrepreneurs doing business here as well as artists, engineers, graduated students of Atlanta's great universities, and even famous Colombian news anchors for CNN.
Atlanta is a beautiful and cosmopolitan city, and we are happy to be here.
We thank you again for this honor and look forward to continue this enriching relationship with the city of Doraville. Thank you very much.

- - -

(Applause)

- - -

MR. HOWE: Ms. Ruiz has brought gifts to the

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Council.
CONSUL-GENERAL ANA JULIETA RUIZ GIRALDO: we bring some presents for you, and we hope you enjoy (presenting).
COUNCILMEMBER FLEMING: Thank you very much.
COUNCILMEMBER ROCHE: Thank you.
COUNCILMEMBER PACHUTA: Thank you.
MAYOR PRO TEM ALEXANDER: Thank you. Thank you, Mr. Howe.
We have public comments on agenda items. If you would approach the podium and state your name and address.
MR. ANDERSON: Stuart Anderson.
I noticed the employees' employment manual was on the agenda tonight. And I didn't get a chance to say anything about this a time or two ago, and I know that it was on August 23rd [sic] that some of this was discussed.
The item 7 in particular, the general character and work habits, are not irrelevant when discussing employees and their appeals.
I certainly hope that when the City Council hears these appeals -- I know that the Mayor and the department head are the primary persons to hear these kinds of appeals and these kind of situations. But

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then when it goes to the City Council, I hope that that part that was put into the ordinance wherein people or employees' general character and work habits were not relevant, I hope that that's not the case, because I think it is very much relevant.
At any rate, I know you're going to discuss a bunch of that tonight.
And the other small thing is I was talking to the people who are doing the park, the stream in the park, Halpern Park. And they didn't ask me to ask you this, but it was expressed that if we don't expend some moneys through public works to take care of the kudzu problem, all the trees that they're paying for -- that we're paying for, that they're going to plant in there will be overcome by the kudzu, because there's a lot of kudzu growing just off their work site, and if that isn't done or looked after, all those trees will be lost.
Thank you.
MAYOR PRO TEM ALEXANDER: Anyone else?
- - -
(No response)
- - -
MAYOR PRO TEM ALEXANDER: Okay. Next we go into reports from departments. I see we have several

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departments here.
Library, do you have anything to report?
MS. HENRY: No.
MAYOR PRO TEM ALEXANDER: Okay. And Chief?
CHIEF KING: No, ma'am.
MAYOR PRO TEM ALEXANDER: Madam Clerk, I believe you wanted to verbalize a reminder regarding the gravel driveway.
CLERK McCAIN: Yes, Mayor.
Just a reminder to everybody, we can post it on the blogs to let people know that next month is the cutoff for the registration on the gravel driveways. So if you can remind people to get those in, that would be fantastic.
UNIDENTIFIED SPEAKER: I'm sorry. It's the cutoff for what?
CLERK McCAIN: For the registering of gravel driveways. If you --
UNIDENTIFIED SPEAKER: Oh. If you --
CLERK McCAIN: -- received a notice --
UNIDENTIFIED SPEAKER: -- have one, you must register it.
CLERK McCAIN: Yes, ma'am.
UNIDENTIFIED SPEAKER: Okay.
MAYOR PRO TEM ALEXANDER: Going into old

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business, we have a second reading of the ordinance regarding amending the regular meeting schedule.
ATTORNEY McLENDON: Mayor and Council, this is an ordinance that we had prepared and was previously reviewed in the prior meeting.
What this has done is basically taken the default meetings from the first, third and fourth Mondays of each month and just made it the first and third Mondays of each month. It also provides that in June, July, August and December, in your discretion, you can waive the third Monday meeting.
MAYOR PRO TEM ALEXANDER: And this doesn't have any impact on the ability to call special meetings if they're needed?
ATTORNEY McLENDON: Not at all. This becomes the published meeting agenda, so it is sort of the meetings that you will have as you move forward.
You have the ability to call other specially-set meetings in your discretion.
MAYOR PRO TEM ALEXANDER: Does Council have any questions or comments?
COUNCILMEMBER ROCHE: I'd like to make a motion that we -- Council adopt Ordinance Number -- revised Section 2-31 of the City of Doraville Code to reduce the number of standard monthly meetings of the

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City Council to two per month.
COUNCILMEMBER PACHUTA: Second.
MAYOR PRO TEM ALEXANDER: Any discussion?
- - -
(No response)
- - -
MAYOR PRO TEM ALEXANDER: Call the roll, please.
CLERK McCAIN: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK McCAIN: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK McCAIN: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes. Thank you.
MAYOR PRO TEM ALEXANDER: We have a second reading of the FTA, which is the Failure to Appear Ordinance.
I believe Ms. Fleming has raised some concerns in Section A, the last line of that section.
ATTORNEY McLENDON: Right.
And Mayor, I've talked to -- in the interim, I've talked to the solicitor and sort of gotten some feedback on this provision. And basically, the feedback I received is this is the method they would ask us to put the ordinance in place.

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What it would do under this ordinance is if you were getting a citation from either an officer or, for instance, code enforcement, there are only two ways they can serve you with that citation. One is by personal service, which would be, you know, if you had a speeding ticket, you get personally served with it, sign for the ticket. The other would be more relevant to a property-maintenance type issue where they'd have to leave it with a responsible person at the household.
With that, what that does is sets up the notice provisions to initiate the case. And then the critical portion of it is the first line in Section B that says, if you've gotten this notice to start a case, which is either personal or leaving it at the residence, then you have to appear in court or it's a violation.
Talking with the solicitor, this is language that had come -- is sort of mirrored in many jurisdictions, and we actually reviewed several jurisdictions to see that this was pretty common language. And one of the reasons the solicitor had asked for this language is that it comes from the City of Atlanta, which has been adopted into Sandy Springs and been used consistently for a long period of time.

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COUNCILMEMBER FLEMING: This particular item I was told would be asked to be removed and postponed to the next date because we did not have --
ATTORNEY McLENDON: The --
COUNCILMEMBER FLEMING: -- the ordinance attached to it, and I was under the impression there would be corrections.
ATTORNEY McLENDON: And when I talked to the solicitor, I certainly would have, based on our last conversation. But I think I got an affirmative this is the correct ordinance.
I'm happy to defer it out, and, frankly, we could even have him here to talk to you about it the next time is fine with me.
COUNCILMEMBER FLEMING: Well, you made the comment in your presentation just now that leaving it with a responsible person at the resident. I don't have a problem with that, but that's not what the ordinance reads.
ATTORNEY McLENDON: Well, you're going to have to have good service of that complaint to be able to enforce that, so I would ...
You know, this language has been vetted and, frankly, used a good bit. I'm happy to defer it and have the solicitor come and talk about it.

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That was sort of -- I went back to the authority on it and talked to them, and they told me they thought this would work.
So why don't we put it out again, and I'll be glad to have him come and talk to us.
COUNCILMEMBER FLEMING: That's fine, and I don't mind the solicitor coming. But I will be opposed to the ordinance written as such that it's not handed to someone of responsibility.
ATTORNEY McLENDON: Okay.
COUNCILMEMBER FLEMING: As I mentioned to you before, you know, sticking it on someone's mailbox or sticking it on someone's door is not a reliable method of leaving a notice of intent.
ATTORNEY McLENDON: Okay.
MAYOR PRO TEM ALEXANDER: So Madam Clerk, if you would place this on the agenda for the first meeting in August.
CLERK McCAIN: Yes, ma'am.
MAYOR PRO TEM ALEXANDER: Thank you.
The next item is Mr. Roche's, payroll issues.
COUNCILMEMBER ROCHE: I had a meeting yesterday with the city attorney, and I'd like to make a motion to postpone this till August 1st.

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MAYOR PRO TEM ALEXANDER: Do we need a motion or just ask the Clerk to leave it on?
ATTORNEY McLENDON: I think you can make a motion to postpone it to a date certain would be the appropriate way to do it.
MAYOR PRO TEM ALEXANDER: Second?
COUNCILMEMBER FLEMING: Second.
MAYOR PRO TEM ALEXANDER: Any further discussion?

- - -

(No response)

- - -

MAYOR PRO TEM ALEXANDER: Call the roll, please.
CLERK McCAIN: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK McCAIN: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK McCAIN: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes. Thank you.
MAYOR PRO TEM ALEXANDER: The Reduce Council Pay -- first reading, Ordinance. It's my understanding we have to do the ordinance in this method because, one, it's, under the Home Rule, revising the City Charter.

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So do you want to explain that a little bit?
ATTORNEY McLENDON: Sure. What you have is when you move -- when you want to amend your charter by virtue of the Home Rule Act, you have to pass the ordinance twice, which is the same ordinance but it has to be passed twice.
What we would be doing tonight would be doing the first reading on both of the ordinances, which are, in essence, identical.
The first one, we would have to come back at the August 1st meeting to adopt it at that time.
You also have to advertise the intent to modify the Charter for three weeks prior to the final adoption, so we've initiated that process.
What we would do is have the first reading of each ordinance tonight. August 1st, we would come back and adopt the first version of the ordinance. Meanwhile, we are advertising the intent to amend the Charter.
And on August 15th, we would come back. It would have been advertised three weeks consecutively, and we would pass the same ordinance again.
Through that process, you've met the Home Rule requirements. It's just an intent to give very high notice to the public of the intention to do so,

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and you would have been able to effect that modification.
COUNCILMEMBER FLEMING: And these ordinances are regarding our actions taken at the budget hearing where we reduced the Council pay from $1,200 to $700 --
ATTORNEY McLENDON: Yes, ma'am. That is the --
COUNCILMEMBER FLEMING: -- effective October 1.
ATTORNEY McLENDON: Correct.
And I apologize. The one in the package says an effective date of January. We have distributed one that shows an effective date of October 1st, and I would be asking that the first reading be of the ordinance that is effective October 1st. That's my understanding was the Council's intention.
COUNCILMEMBER ROCHE: Is there any way to take the dollar amounts out of the Charter?
ATTORNEY McLENDON: It is something that is consistently in charters, and I think that the reason it is consistently found in charters is because to make that modification, they want that process, that notice, to be out there.

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I'm not going to tell you there's no legal way not to put it in there, but it is so consistent throughout charters, I would hesitate to delete it from charters.
COUNCILMEMBER FLEMING: And I --
ATTORNEY McLENDON: And --
COUNCILMEMBER FLEMING: I'm sorry.
And in our discussion three weeks ago, around then, when we were doing the budget hearings, I felt that that was part of the -- not on the referendum status, but part of our bills.
And I believe, were you not instructed? or someone was instructed to request or check into all of the items that went to the House to determine whether they signed off on taking the moneys, salaries, out of.
ATTORNEY McLENDON: And I think we did review the bills that had passed and did not find that as an amendment in any of the Charter amendments that took place in the last legislative session.
And I remember reviewing that issue and not finding that amendment as one that took place in the session.
COUNCILMEMBER FLEMING: Thank you very much.
ATTORNEY McLENDON: Uh-huh.

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MAYOR PRO TEM ALEXANDER: Ms. Fleming, I do think there was language included in the -- about the city manager thing going to a referendum, because, obviously, if we switch to a city manager form of government, the Mayor's salary is not going to remain that of a full-time mayor.

COUNCILMEMBER FLEMING: And that's why we were trying to get the Mayor's salary out of --

MAYOR PRO TEM ALEXANDER: So I think --

COUNCILMEMBER FLEMING: -- the Charter.

MAYOR PRO TEM ALEXANDER: -- there was some language attached to that piece of legislation that passes on the referendum.

COUNCILMEMBER ROCHE: Because I looked for that, and I couldn't find that anywhere --

MAYOR PRO TEM ALEXANDER: No.

COUNCILMEMBER ROCHE: -- in anything that was passed.

MAYOR PRO TEM ALEXANDER: Yeah.

COUNCILMEMBER ROCHE: So even the Mayor thinks so.

MAYOR PRO TEM ALEXANDER: Yeah.

So we will --

CLERK McCAIN: Mayor, may I answer that, just because I've had a question come up before as far

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as qualifying fees, because we have a November election and they're set on the actual Council pay.

Just for clarification, in Chapter 21, it does indicate that it would be the prior year's salary that sets the qualifying fees, so the qualifying fees will not change.

MAYOR PRO TEM ALEXANDER: For this election.

CLERK McCAIN: Yes, ma'am.

MAYOR PRO TEM ALEXANDER: All right. So we are having the first reading of Ordinance number 2011-30 regarding Council pay; is that correct?

ATTORNEY McLENDON: (Nods head)

MAYOR PRO TEM ALEXANDER: And we've also had the first reading on Ordinance 2011-31 for Council pay.

ATTORNEY McLENDON: (Nods head)

MAYOR PRO TEM ALEXANDER: And we are having the advertisements placed; correct?

ATTORNEY McLENDON: The advertisements are being placed. That is correct, yes, ma'am, and this agenda item would come back on the 1st.

MAYOR PRO TEM ALEXANDER: Both the agenda items; correct?

ATTORNEY McLENDON: Just the first ordinance would come on the 1st to be adopted, because that

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would be the second reading of -- it's hard to explain -- the first ordinance.

The second one would come on the 15th --

MAYOR PRO TEM ALEXANDER: Okay.

ATTORNEY McLENDON: -- which would be the one adopted after the three weeks' notice --

MAYOR PRO TEM ALEXANDER: Okay.

ATTORNEY McLENDON: -- and we would have met the criteria.

MAYOR PRO TEM ALEXANDER: Items number 4 and 5 are regarding modifying the Charter again regarding the employee appeal process.

ATTORNEY McLENDON: And this is an item that I'm looking for feedback. In our current charter, it states that all appeals of terminations would go to the Mayor and Council and it sets out a brief procedure on doing that.

In addition, the Employee Manual provides provisions for a grievance process as well as hearings on termination.

One of the things that we found that your Charter does not contemplate is a good process to have available to you is to have the potential that you can appoint a hearing officer for these type of hearings.

What that basically means is whereas a

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hearing would be conducted in front of the Mayor, the Mayor would be able to designate a hearing officer, which is usually an attorney with some familiarity with that area of the law, to conduct the hearing.

You know, there is an expense associated with that, but at the same time, I think it provides for a very controlled process of appeal. You end up with a strong, legally founded review and generally a well founded order that comes out of that process. You've got a really very fair analysis.

We would recommend that this comes out of the Charter. It's not really a process that has to be laid out in the charter.

The language of the Charter, we state -- we leave it the same as that the Mayor and Council have the same hiring-and-firing authority but state they have the ability to designate that authority throughout the organization and to set forth the procedures of appeal. That's what this amendment of your Charter would do.

So you've not kept all that authority here. You go and, you know, for instance, a department head may be a better person to make a hiring-and-firing decision regarding the people within that department. Department heads report to the Mayor.

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That is the essence of the first item regarding the Charter. So it is to state you can delegate that authority and you can make rules and procedures for how to deal with those complaints. Okay?

And if you don't mind, by way of explanation, the next item sort of falls right in line with that, which is the next item is looking at the Employee Handbook, which is where those rules are put in place to do those reviews.

And in the scenario we've prepared and brought forward, what it does is it says: If --

There are two provisions in here. The first is just a complaint process.

-- that if an employee has a grievance with their supervisor, then there's a method that they can go and say, I'm not happy with this decision.

And there is a process laid out in the handbook that lets them get a review of that by the department head, and the department head has to respond to it. It's a provision to work it out.

Beyond that, the provisions on the termination, what that would do is create a situation where if there had been a hiring-and-firing decision by a department head, under this scenario, the

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employee affected would be able to appeal that. And if a department head made that decision, it would be appealed to the Mayor, or when you see the language, "the Mayor's designee" means a hearing officer.

So if a department head made a hiring-and-firing decision and the employee wanted to appeal that termination, they would have the right to file an appeal to be heard by the Mayor, or, if the Mayor chose, to have a hearing office hear that.

At the second level, if it is -- the Mayor is the department head's supervisor and the department head chose to appeal that, the provision states that the City Council could appoint a hearing officer for that review.

That's what we've laid out.

I can tell you I've gotten some additional language after getting -- I've gotten some other attorneys to look at this with me as well and gotten some suggested language that I might even modify this to some extent.

But I wanted feedback on the over-arching structure of this. You know, this is a structure that let's us put it into a process with an attorney who's been hired by the City to be the hearing officer, who regularly conducts hearings, knows how to evaluate the

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evidence, understand the standards and prepare an order that is a strong and well founded order.

I think it's a good process to have, and I'll open it up to questions, because I know it's a lot to digest.

COUNCILMEMBER FLEMING: Okay. The first item that we're referring to is taking it out of the Charter, and that would be 11-21.

I don't have a problem with us taking the specifics out of the Charter and including the italic that's listed as Section 2-12 listed on here. I don't have a problem with that particular agenda item that we have this evening, which is item 9-4.

I do definitely have a problem with item 9-5, and I'd like to go over a few things with you --

ATTORNEY McLENDON: Sure.

COUNCILMEMBER FLEMING: -- on page two, Section A, the last sentence, "If the supervisor is the Department Director, then complaints shall be presented directly to the Department Director."

Okay. The next, Section B --

ATTORNEY McLENDON: That should say -- and I apologize -- that should say the Mayor.

COUNCILMEMBER FLEMING: Correct.

ATTORNEY McLENDON: Yes.

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COUNCILMEMBER FLEMING: Sentence number two in B, where this topic is reviewed by Department Director, it states "The Department Director shall make such investigation as he may deem necessary and shall within a reasonable time inform the employee of his decision."

ATTORNEY McLENDON: Uh-huh.

COUNCILMEMBER FLEMING: That's not due process for the employee, and I don't like "within a reasonable time."

ATTORNEY McLENDON: One response, just something for us to think about here, is the City is an at-will employer.

We can create these -- you know, we can create processes to give people review. And the good thing about those processes is it lets us internally evaluate decisions that are being made. And if let's say a decision that we weren't crazy about was made at the department head level, it would give us a method of reviewing that and hopefully coming in and saying, "Not crazy about that. Let's fix it."

I am hesitant about calling it due process, and the reason being is if you go too far down that road, we can get where we are not considered an at-will employer.

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But if you're going to put "a reasonable time" in there --

ATTORNEY McLENDON: Uh-huh.

COUNCILMEMBER FLEMING: -- you're affording them due process.

And I feel that we need to limit the number of -- I mean are we going to have them terminated and they've appealed and they've gone home for three or four months?

You know, who's going to subjectively decide what "reasonable time" is?

ATTORNEY McLENDON: One thing to look at as we look at this, there are two, sort of, things going on with this provision.

The review by the director is more of a grievance process. This is more of a "I didn't like a decision that was made," and I'm going to kind of be able to say 'I didn't like the fact you disciplined me for X, and I'd like to make it clear.'" And under this provision, the director supervisor has to respond.

I don't think it hurts anything to put a time frame on that. You know, a common time frame is I think we had five working days is what we have been doing throughout here, and that is probably

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reasonable.

The point I would make is that is one sort of animal that we're dealing with, which is a grievance process.

The termination process is in Subsection C.

COUNCILMEMBER FLEMING: Okay. But you're saying in the complaint procedure, you're making the statement "who receive disciplinary action."

Well, "disciplinary action" is subjective as well and could very well mean -- and it goes on to say "other than verbal counseling or a written warning."

So that's making me believe that the disciplinary action is, "You need to go home; you're terminated," or, "You are on suspension," or, "You are on such-and-such." So we have actually affected the employee's time in service with us if we're going to use the term "disciplinary action."

ATTORNEY McLENDON: Uh-huh, and you are correct; there are different levels of actions that can be taken.

And anything short of a termination is handled under Subsection A and B, and that's -- I mean this is not a huge, drawn-out process. If it is something under Subsection A and B --

And this is just the way we have it written,

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so I am -- like I said, I'm looking for feedback.

But under this, it is a relatively limited right to go to your supervisor and say, "I disagree. Here's why I disagree," and to get a written response within a reasonable period of time to that. Okay?

Termination would go out under Subsection C. And then that is the one that has the more substantial hearing process to have it reviewed by -- Again, if it's a department head that's made the decision, it's reviewed by the Mayor or the Mayor's designee; if it is a Mayor decision vis-a-vis a department head, then it goes to a hearing officer appointed by the Mayor and Council under this version, and --

COUNCILMEMBER FLEMING: Okay. In Section D where it says "Mayor's or Hearing Officer's Decision. Within five days of the conclusion of the hearing," well, I would think that the decision would be made at the hearing.

ATTORNEY McLENDON: In this scenario, what you usually find is that they'll take all the evidence, and usually they'll want to do -- a hearing officer will give you a written decision.

And that's a good thing for this, because what you end up with is a documented decision that becomes part of the record, and if somebody chooses to

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appeal it, that document exists and it goes up with the appeal.

Usually, a hearing officer, if they've made up their mind at the hearing, would say something to the effect of, "Let me tell you what I'm thinking. This is what I believe, you know, at this point, and this is what I'm leaning to. I'm going to prepare an order and I will get it to you."

I would rather --. This process is when you wouldn't want it to be a verbal determination. I would want a written determination. That's why you give them five days to go make a written determination.

COUNCILMEMBER FLEMING: Okay. And letter F is "Standard for Modifying Discipline," okay. "Supervisors, Department Directors, and Mayor or designated Hearing Officer shall modify or overturn disciplinary decisions only where a determination is made that there is an error of fact or that the action was motivated by a non-job-related factor."

Well, that's hamstringing the decision-making.

COUNCILMEMBER PACHUTA: I think we should do that. And I think this came about -- we passed this section last year or something similar to it because

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of an incidence where some employees were disciplined for not reporting sexual harassment that they witnessed, and the Mayor overturned that discipline.

And I think, one, it undermines department heads' authority, and then, two, it also sends a very bad signal for us if we're accused by another employee of sexual harassment, that there was no punishment for employees for not reporting seeing that sexual harassment.

COUNCILMEMBER FLEMING: So why have F at all?

ATTORNEY McLENDON: F creates what you would call a standard of review. That's what your hearing officer would come and look at and say, "Okay. What's your issue?"

And they'd come in, and it would be, "Well, John was terminated, and here was the reasons that that occurred."

And then what the hearing officer would do is come in and say, "Okay Well, here's how they want me to review this: to determine, you know, if somebody said you were fired because you did this act."

And what one standard would be, if he took all the evidence from everybody that came in, and he

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came in and said, "You know what? I don't think factually you were correct."

So that would be one standard: that they would analyze it to say, "I've listened to all the evidence, and the fact pattern on which this was based was wrong." And that's one standard you've given to overturn it.

And the other is if there was a motivation that was basically an improper motivation, which would be something not related to the work.

You know, I think we were trying to sort of mirror the current handbook without going too far afield, so I think this was a provision that was in there.

I think you need standards of review. These made sense to me from the standpoint of a review, but it's something, again, open to discussion.

I can see why you would limit it, because I wouldn't want to give the hearing officer just carte blanche authority to come in and say, "Well, what do you think is the right idea?"

I want them to address it from the -- address it and me tell them how you're supposed to be addressing it: "Hearing Officer, I'd like you to review it to make sure this is correct."

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So you know, that's my explanation of the language, and I think it's something we can talk about.

COUNCILMEMBER FLEMING: Well, the reason why I bring this up -- and though I appreciate Ms. Pachuta's comments, though I did not bring my Code of Ordinance book with me -- the criteria or the hearing procedures that were written, that I was opposed to and voted against, should be considered in this particular document, because if you're going to have a hearing officer, you need to either modify or correct, you know, the procedures for the hearing.

So before we go off and make a decision on amending the employment hearing procedures, we need to get all the hearing procedures in one section and review the whole thing as a unit rather than picking things out.

I am opposed to -- You mentioned a hearing officer several times. Yyou've also mentioned an attorney that would specialize in this type of thing.

ATTORNEY McLENDON: Usually, they are.

COUNCILMEMBER FLEMING: And I'm not in favor of hiring a labor attorney for us to be able to hear appeals.

I still believe that the City Council was

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elected for part of these duties, and I believe we're relinquishing part of our -- relinquishing part of our duties if this is adopted.

ATTORNEY McLENDON: Okay.

COUNCILMEMBER FLEMING: So I would be opposed to this particular document.

COUNCILMEMBER PACHUTA: And I'm the extreme opposite, and that's my background: in labor.

In that we are an at-will employer, I don't think we should be adding any steps that could be construed as adding an extra due-process requirement that employees --

If any discipline or termination is motivated by illegal actions, they already have a remedy via going to the EEOC or what.

If we do encourage additional steps for the employee to appeal a decision or question a decision, I guess my only concern is that department heads or supervisors' decisions are not overturned arbitrarily, that they are either based in the fact that the facts were wrong that led to the disciplinary action or the motivation was based on something illegal.

ATTORNEY McLENDON: One provision that I probably will suggest we add into this ordinance is really an additional section that is a disclaimer that

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1 says, "We give all this above process, but understand
2 none of this changes the fact that we are an at-will
3 employer," et cetera.
4 It's a little self-serving, but I think that
5 is a provision that I would suggest we add into this
6 and would probably send you an amendment with that.
7 I --
8 COUNCILMEMBER ROCHE: I --
9 ATTORNEY McLENDON: Go ahead. I'm sorry.
10 COUNCILMEMBER ROCHE: No. You were talking.
11 I have about three things.
12 ATTORNEY McLENDON: I was going to say, my
13 only thought is I've just had a lot of, unfortunately,
14 experience with this, and I understand.
15 And there are different schools of thought
16 on the hearing-officer issue. I can tell you, in my
17 experience, employment law can be very complex. It
18 can have all sorts of pressures brought to bear on it.
19 And I fell into the camp of saying, you know
20 what? We're already made the decision in the City
21 that is being appealed, and at that point is when we
22 would have all of the input of, hopefully, the City,
23 to make sure we've made the correct decision.
24 At the time of the appeal, having an
25 objective third party, understanding the cost is an

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1 issue --
2 And this is discretionary to use a hearing
3 officer; it's not mandatory.
4 -- but having an objective third party to be
5 able to come in, that understands how to conduct a
6 hearing, how to write orders and, you know, analyze
7 facts versus standards is a good thing.
8 That's where I come from on it. And again,
9 this is y'all's decision, not mine, but I tell you --
10 I want to tell you my thoughts so that you can
11 understand it, but again, it's y'all's decision.
12 COUNCILMEMBER ROCHE: I have three things,
13 and I've thought about this since yesterday.
14 I actually see it one way if we had a city-
15 manager form of government than I do with the form of
16 government that we have, which is essentially a Mayor
17 who is essentially the city manager, the CEO.
18 And my concern there is that I think that
19 good employees need to be protected from the politics,
20 frankly. And with the city-manager form of
21 government, again, I would see it differently.
22 To start with the section about responding
23 within a reasonable time, I think that we should
24 definitely set a specific time period for that. The
25 reason is it's been my experience that in other

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1 personnel issues that have been brought up, reasonable
2 time meant never; you know, "Well, it's reasonable to
3 me."
4 So I would definitely say at least like 15
5 days or maybe 10 working days, something like that,
6 because leaving people hanging is just not -- you
7 know.
8 I can live with the F part as far as what
9 the standard for modifying a discipline was. If you
10 get it wrong, you get it wrong, and people need to be
11 treated fairly.
12 The third thing is I'm a little intrigued by
13 the whole concept of a hearing officer. But at the
14 moment, as long as we have a political Mayor and a
15 political Council, I think that I would -- I'd be
16 interested in talking more about maybe having a
17 hearing officer that would preside over the hearing
18 itself.
19 Because as far as I'm concerned, if I'm the
20 Mayor and someone under me gets fired, essentially,
21 I've made that decision. So I'm basically appealing
22 to myself or I'm having this person appeal to the same
23 person who made the decision. And to me, having a
24 Council is like a checks and balances for fairness.
25 So now if I was the Mayor and I terminated

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1 somebody, I probably shouldn't be the one presiding
2 over that hearing.
3 We don't want a situation like I remember
4 hearing about where a mayor gets elected and decides
5 he's going to fire everybody in city hall. Right?
6 Even thought it may have been a good idea, but, you
7 know, still, you know. And I'm not talking about here
8 or anything, but seriously.
9 And I don't know how that works and
10 everything.
11 I got the idea about having an attorney.
12 ATTORNEY McLENDON: Can I --
13 COUNCILMEMBER ROCHE: I got the idea about
14 having someone that understands the process and how to
15 avoid the pitfalls, because we've fallen into several
16 pitfalls. We don't have a personnel thing now,
17 really, but go ahead, Cecil.
18 ATTORNEY McLENDON: I was going to say, I
19 thought I did try to address that in here, and it
20 may -- I mean the way we tried to address it in here
21 was say there are two levels of decision making on
22 these decisions.
23 One is the department head basically dealing
24 within their department, and that would be a decision
25 -- For instance, if the department head made a

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1 decision on one of their employees, that would be
2 appealed to the Mayor or the designee.
3 And if the Mayor made a decision on a
4 department head, that is the one that would be
5 appealed to the hearing officer appointed by the
6 Council.
7 That's how I tried to structure it, because
8 I understand, if you appealed -- You know, if I made
9 the decision, and I said, "Great. Appeal it to me,"
10 you know, I've already written the order, so that's
11 not going to be a very meaningful appeal. So --
12 COUNCILMEMBER ROCHE: And I --
13 ATTORNEY McLENDON: -- we tried to create
14 that structure.
15 COUNCILMEMBER ROCHE: And I got that part.
16 I guess where I'm at, where I'm differing is
17 that this hearing officer would preside over a
18 hearing, and when the hearing is done, we go into an
19 executive session with that hearing officer, who's an
20 attorney and --
21 COUNCILMEMBER PACHUTA: No. The hearing --
22 COUNCILMEMBER ROCHE: -- the Council would
23 make the --
24 COUNCILMEMBER PACHUTA: -- officer makes the
25 decision; correct?

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1 COUNCILMEMBER ROCHE: Excuse me. I'll be
2 finished in just a minute.
3 And the Council would still retain the
4 authority to make the decision.
5 COUNCILMEMBER PACHUTA: No. That's not --
6 COUNCILMEMBER ROCHE: Do you see what I'm
7 saying?
8 COUNCILMEMBER PACHUTA: -- how I'm
9 understanding it.
10 ATTORNEY McLENDON: It's not how it's
11 written.
12 COUNCILMEMBER ROCHE: I'm not saying how
13 it's written. I'm --
14 ATTORNEY McLENDON: Yeah.
15 COUNCILMEMBER ROCHE: -- saying this is --
16 ATTORNEY McLENDON: It's not --
17 COUNCILMEMBER ROCHE: -- what we need --
18 ATTORNEY McLENDON: -- how it's written.
19 COUNCILMEMBER ROCHE: -- to consider.
20 ATTORNEY McLENDON: And I can tell you I've
21 seen ordinances like that, and, frankly, I think I've
22 written ordinances like that, that what would happen
23 is --
24 And again, this is feedback I want on this.
25 I've had ordinance where it says it goes to

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1 a hearing officer and then the hearing officer makes
2 their report, and it is -- And you know, you can get
3 really complicated with all the rules on these, but it
4 says the hearing officer will make its report and give
5 it to the deciding authority, and the authority can
6 either affirm, deny or modify.
7 It gets complicated. But that is an option
8 that is available if the issue is retaining some. And
9 there are ups and downs to all of that.
10 COUNCILMEMBER ROCHE: And I guess, from me,
11 is the experience of, you know, someone was let go,
12 and they shouldn't have been let go, and a hearing was
13 held before the Council.
14 We got to the bottom of the -- we got the
15 real answers by being able to ask questions. And that
16 employee was -- who was, in my opinion and in the
17 opinion of the majority of the Council, let go wrongly
18 and was reinstated to the position.
19 And the point being, though, that the
20 Council had the opportunity to carefully ask those
21 questions, et cetera, et cetera.
22 I mean don't get me wrong. I have concerns
23 about our current hearing process now as written, not
24 what's here.
25 And frankly, what's different is if we had a

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1 professional city-manager form of government, then
2 that city manager would be responsible, I believe, for
3 this, but that's -- we're not there yet. So I'd be
4 interested in something like that, maybe, to bend that
5 direction.
6 And last but not least, if I understand
7 correctly from a discussion earlier, the way this is
8 written, if the City of Doraville for whatever reason
9 chooses to eliminate a position, then, in theory, the
10 employee is terminated and, in theory, the employee
11 would have the opportunity appeal that. And to me,
12 eliminating a position is not the same as being
13 terminated for cause.
14 And maybe I read through it and missed it,
15 but I thought that -- I could see having an appeal
16 where someone is terminated for cause, to establish
17 whether or not the facts of the case are correct.
18 ATTORNEY McLENDON: And in this ordinance,
19 it is for cause. If you look --
20 COUNCILMEMBER ROCHE: It is for cause?
21 ATTORNEY McLENDON: -- at the beginning of
22 that code, the section -- Section C --
23 COUNCILMEMBER ROCHE: Okay. The complaint
24 procedure. Okay.
25 ATTORNEY McLENDON: -- actually that is some

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1 language I am looking at, because that "for cause" is
2 loaded language that when somebody sees "for cause,"
3 they say, "not at will."
4 And I might -- I'm rolling around in my head
5 whether to change that language to be: when somebody
6 is terminated as the result of a disciplinary matter,
7 to just get the "for cause" out.
8 But it's really the same concept, which is
9 if you've been terminated because your job is no
10 longer there, this paragraph doesn't apply because
11 it's not a disciplinary termination, it is a down-
12 sizing termination.
13 COUNCILMEMBER PACHUTA: I think the Council
14 needs to get away from -- the Council needs to be a
15 body that decides policy and to get away from these
16 employee/management concerns.
17 My preference is not to have any kind of
18 internal hearing procedure, because employees who are
19 terminated illegally have options already available to
20 them.
21 But if we do have one, I think it needs to
22 be an objective hearing-officer hearing procedure and
23 that Council should not be involved in that. The
24 political body should not be involved in that
25 operational activity.

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1 COUNCILMEMBER ROCHE: And frankly, I agree
2 with that, but until such --
3 Currently, we have two arms of government.
4 We have a politically-elected Mayor and we have a
5 politically-elected Council. And until we can switch
6 to a "weak mayor," they call it -- the city manager
7 form of government where you have a professional
8 manager, then that professional manager is the one
9 that needs to be responsible for that.
10 And so you know, like I said, I'm of two
11 minds depending on how that goes.
12 ATTORNEY McLENDON: With this, one of the
13 things -- You know, we have two things going here.
14 One is the Charter --
15 COUNCILMEMBER ROCHE: Well, right.
16 ATTORNEY McLENDON: -- which I think
17 everybody seems okay with that. And that one requires
18 a much longer lead time because it has to go through
19 the charter-amendment process. So we're into the same
20 first reading, you know, the whole advertising/
21 adopting-it-twice process on that.
22 To the extent that seems like everybody's on
23 board, I'm hearing I might move forward on that.
24 With this ordinance, I really wanted to get
25 a lot of feedback, and I even have some more thoughts

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1 on this ordinance but I wanted to get the basic
2 structure out there.
3 What I'd like to do is let me take this,
4 make some changes on it. I have some that I think
5 even provide more safe harbor to us, because I want us
6 to be -- What I'm looking for is to take as much risk
7 and legal risk out of this process as I can. I'm
8 going to have an amendment that changes some things,
9 that does that.
10 I can do a couple of different versions of
11 this and send it to you.
12 Again, the policy is not -- the policy is
13 you-all's, and what I want to do is get legally good.
14 These policy changes you-all are talking about are
15 just the insertion here or not of a phrase here or
16 there.
17 So what I might ask is on this piece of it -
18 - We currently have rules in place. We have a
19 handbook. Rules are currently in place. Let me take
20 this conversation under advisement, do some revisions.
21 I can e-mail them out to you, and everybody can be
22 looking at them and thinking about them as we go
23 forward. And hopefully, the revisions I do will help
24 us sort of further the discussion to reach whatever we
25 reach at the end.

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1 COUNCILMEMBER FLEMING: Well, and as you're
2 looking at this, I mean I think it's necessary -- I
3 can only assume that you're not deleting everything
4 that we have just done in the last year as far as
5 appeal process, because it's lengthy. I mean there
6 must be 20 items listed as far as the hearing
7 procedures are concerned and what must be followed and
8 what is allowed to be acceptable evidence and so forth
9 and so on.
10 If you're not aware of that, it should be in
11 the code of ordinances or in the personnel manual, and
12 that needs to be looked at and scrutinized as well as
13 in this particular document.
14 ATTORNEY McLENDON: I have been taking this
15 out of what I have as your personnel manual and
16 looking at the handbook and revising those provisions.
17 But that's good information. If I need to,
18 you know, do a further review of things, I'll do that.
19 I hear the feedback, and let me take it and
20 sort of put something together based on this to
21 continue the dialogue if that works.
22 And you know, we currently have rules in
23 place. What I'm just trying to do is propose an
24 alternative that lets us consider this hearing
25 officer, is where I am. Because I fall squarely in

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the camp of hearing officers because it's people who are familiar with these things, know how to conduct the hearings, and they're usually objective to the situation.

So let me take the conversation and get back to you with an amended ordinance on it.

MAYOR PRO TEM ALEXANDER: I just want to remind Council that we have imposed budgetary deadlines on our department heads of October 1 to make personnel adjustments. So we cannot let this issue lag, because it does not address a reduction in force or, as Mr. Roche said, an elimination of a position.

COUNCILMEMBER ROCHE: That would be handled under the Charter change; right?

MAYOR PRO TEM ALEXANDER: No.

ATTORNEY McLENDON: What would happen is --

COUNCILMEMBER FLEMING: Well, it's easy enough to do, that you can do an amendment to Section B, D, E, F, whatever: There will be no appeals for layoffs or reduction of force, you know, layoffs or whatever you want to call it, or elimination of positions.

I mean that's easier to do than do all of this.

ATTORNEY McLENDON: It's a little bit of

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both, because the Charter has to be amended to --

COUNCILMEMBER FLEMING: I mean that's fine.

ATTORNEY McLENDON: -- to get in a square.

And that's the one we have to start now.

COUNCILMEMBER ROCHE: Right.

ATTORNEY McLENDON: This one, you know, is just an ordinance. So this one, we can talk about it and come to the conclusion and look at a lot of different ways to address it.

COUNCILMEMBER FLEMING: But if it's necessary, as Ms. Alexander mentioned, if that's what we're really trying to address here for the upcoming possibility of eliminating positions, and layoffs, then that's easy enough to do with an easier ordinance by just saying, you know --

ATTORNEY McLENDON: I understand.

COUNCILMEMBER FLEMING: -- bam, bam.

ATTORNEY McLENDON: Yeah. If we're taking this on, I'd love to do it once and have it where we're happy with it and never have to, hopefully, come back and do it again.

But you're right; you could narrow the scope of it.

MAYOR PRO TEM ALEXANDER: So we have had the first reading of Ordinance 2011-32, and that will

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appear on the August 1 agenda; and we have had the first reading of Ordinance 2011-33, and that will appear on the August 15 agenda.

We have discussed Ordinance 2011-34 regarding modification to the personnel manual regarding hearing procedures and appeal procedures. The city attorney will come back to us with more information, and that will appear on the August 1 agenda.

And I've already asked once if we had any reports from committees, commissions, boards and appointments.

We'll open up now to public comments. If you have any public comments, come to the podium and state your name and your address, please.

- - -

(No response)

- - -

MAYOR PRO TEM ALEXANDER: Seeing none, motion to adjourn?

COUNCILMEMBER PACHUTA: Motion.

COUNCILMEMBER ROCHE: I have --

MAYOR PRO TEM ALEXANDER: Yes.

COUNCILMEMBER ROCHE: -- one thing I wanted to say.

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As we all know, there is going to be an election tomorrow --

MAYOR PRO TEM ALEXANDER: Please hope.

COUNCILMEMBER ROCHE: -- and there won't be a runoff.

But I do want to commend Councilwoman Alexander. We haven't always agreed, but she's done a very good job stepping up and keeping the meetings somewhat civil and saving us from our checks bouncing and that sort of thing. So I would like to commend Councilwoman Alexander.

- - -

(Applause)

- - -

MAYOR PRO TEM ALEXANDER: Thank you.

Judge Carter has been asked to attend the July 25th meeting to swear in the new Mayor, and he has agreed.

So no ties tomorrow; everyone get out and vote, please. We don't want a tie.

Thank you, Mr. Roche.

And I would like to thank everyone, Ms. McCain, Chief and Mayor Atkinson, and the library staff, everybody that has really stepped up to the plate in helping with the budget, and hopefully we can

muddle through it and get it implemented.
I hope the new Mayor is ready to go to work on July 26.
COUNCILMEMBER ROCHE: May God have mercy on her soul.
MAYOR PRO TEM ALEXANDER: And we have a motion to adjourn. A second?
COUNCILMEMBER ROCHE: Second.
MAYOR PRO TEM ALEXANDER: Any discussion?
- - -
(No response)
- - -
MAYOR PRO TEM ALEXANDER: Call the roll, please.
CLERK McCAIN: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK McCAIN: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK McCAIN: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
MAYOR PRO TEM ALEXANDER: Thank you, everyone.
- - -
(Meeting adjourned at approximately 7:30 p.m.)
-o0o-

C E R T I F I C A T E

STATE OF GEORGIA]
COUNTY OF DEKALB]

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the proceedings were reduced to typewriting under my direction and control.

I further certify that the transcript is a true and correct record of the evidence given at the said proceedings.

I further certify that I am neither a relative or employee or attorney or counsel to any of the parties, nor financially or otherwise interested in this matter.

This the 25th day of July, 2011.

_____
Theresa Bretch, CCR
Permit No. B-755

[SEAL]

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