In The Matter Of:

City of Doraville

State of Georgia

- City Council Meeting -

November 2, 2009

American Court Reporting Company, Inc.

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(404) 892-1331 - (800) 445-2842

Original File 59209-3.TXT

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

* * *

Transcript of the proceedings held in the City Council Room at Doraville Civic Center, 3770 Central Avenue, Doraville, Georgia, Mayor Ray Jenkins presiding, before Theresa Bretch, Certified Court Reporter, commencing at 7:05 p.m. on Monday, November 2, 2009.

* * *

APPEARANCES:
Doraville City Council:
Hon. Ray Jenkins, Mayor
Councilmember Maria Alexander
Councilmember Brian Bates
Councilmember Robert Spangler
Councilmember Donna Pittman
Councilmember Bob Roche
Councilmember Pam Fleming
Murray J. Weed, City Attorney
Ms. Rhonda Blackmon, City Clerk

P R O C E E D I N G S

MAYOR JENKINS: Meeting come to order. Call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Here.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Here.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: I'm here.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Here.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Here.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Here.

MAYOR JENKINS: Okay. Before we get into the meeting, I want to introduce somebody. Marcella Nelson, would you come up, please? Chuck, would you come up with her?

MAYOR JENKINS: I would like to thank Marcella for her alertness on a stop that she had. She came up on a person without a seat belt, and she went up to the car and she smelled something kind of odd -- I believe I'm saying it right -- and also she noticed a bunch of wires that were coming out of the

cigarette lighter. So she thought something was wrong, and of course she was right. The gentleman driving the car had a fully-equipped meth lab in the vehicle. And thanks to her alertness, we got this man off the road quickly.

And I just want to thank you, as the Mayor and the Council, for being so alert, until you're better paid or whatever you want to call it.

- - -

(Applause)

- - -

MAYOR JENKINS: Chuck might want to add a little to that.

COUNCILMEMBER BATES: Where's your partner?

COUNCILMEMBER ALEXANDER: Where's Dak?

COUNCILMEMBER BATES: Where's Dak?

OFFICER NELSON: He's outside missing me.

CAPTAIN ATKINSON: I can just add that this was a really, really, really dangerous situation that was stopped. A lot of people don't know how dangerous this type of situation is, but that vehicle was being driven on our streets, on the interstate, 60 miles an hour. If it got into a wreck, there would have been an explosion and no telling who all might have been affected by that. But this gentleman was cooking the

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1 drug methamphetamine as he was driving down the road.
2 The DEA has a special unit that's assigned
3 just to clean up this type of drug because of the
4 chemicals involved. If you mix them the wrong way,
5 it's not good.
6 So Officer Nelson did an excellent job in
7 getting this guy off the road.
8 MAYOR JENKINS: She's a canine officer and
9 she has -- what is his name?
10 OFFICER NELSON: Dak.
11 MAYOR JENKINS: -- Dak. She's going to
12 bring him in and let you see him in just a few
13 minutes. We're going to move on with the meeting.
14 - - -
15 (Applause)
16 - - -
17 MAYOR JENKINS: Okay. We're going to take a
18 five-minute break.
19 - - -
20 (Brief recess)
21 - - -
22 MAYOR JENKINS: Meeting come back to order.
23 Brian, you have the floor.
24 COUNCILMEMBER BATES: All right. I've moved
25 on to page 51, which is Section 3-38, open areas and

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1 patios. A number of questions regarding Subsection
2 (1) and (2) regarding the enclosure of a patio by some
3 structure but you must go through the main licensed
4 premise, which is Subsection (1), and Subsection (2)
5 says that the patio must be covered by a permanent
6 roof and the roof shall be a structural of a floor
7 area.
8 Can you walk me through the reasoning
9 behind --? I think I understand the first one, but it
10 requires you to go through the main entrance to get to
11 the patio, where I know of several instances where the
12 patio is in front of the building and you go through
13 the patio to get to the main entrance.
14 And then I'm a little less clear on the
15 reasoning for number (2). The reason for a patio
16 would be to sit outside and enjoy the sun, but you
17 can't do that if there's a roof covering the patio.
18 ATTORNEY WEED: The reasoning with regard to
19 the enclosure is that Maggiano's at Cumberland Mall is
20 a great example. While it has two gates that you can
21 exit out of with an alarm sounding, it doesn't have an
22 entrance that you can go into from the street.
23 - - -
24 (Dog barks)
25 - - -

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1 ATTORNEY WEED: And apparently someone else
2 agrees with my --
3 COUNCILMEMBER BATES: I think he disagrees.
4 - - -
5 (Laughter)
6 - - -
7 ATTORNEY WEED: And then you'd go out and be
8 seated if you wanted to be in a pavilion/patio/deck
9 area. And the thinking on it basically is just some
10 means of control to make sure that as, you know, kids
11 in a movie theater, one kid doesn't open the back door
12 to the movie theater and let everybody in for free,
13 that there is some exercise of control over the space.
14 That's the concept.
15 With regard to the roof, the concept of the
16 roof is really to clearly define what the patio area
17 consists of and what it does not, because one thing
18 you have to bear in mind is that these alcohol
19 beverage regulations for on-premises consumption deal
20 with how many people are in an occupiable space
21 because the tables and chairs, et cetera, will help
22 dictate the fire safety routes and how many people can
23 be in the facility.
24 So the question is, is the patio part of the
25 facility for licensing purposes? Well, sure it is.

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1 In fact it has to be. You'd have to measure from the
2 outer rim, the outer corner of the patio, not from the
3 building in chief. By having a roof extension over
4 the patio area, it clearly indicates that no cheap
5 patio is going to go up that's simply, you know, a
6 plyboard fence and that there's some expense involved
7 and some planning involved and some measurable
8 distance involved. And that's essentially it.
9 Legislatively, you know, could I live
10 without the roof? I could. But you know, clearly
11 you'd need to have some sort of concrete pad and some
12 sort of enclosure around it, and the distance to the
13 nearest church, et cetera, would need to be measured
14 off of the corner of that patio -- be part of the
15 establishment in chief and not simply an add-on.
16 COUNCILMEMBER BATES: That would be the
17 direction of my preference: to eliminate the roof
18 requirement but make sure that you've got that
19 enclosed area as part of the establishment.
20 ATTORNEY WEED: Yeah, I --
21 COUNCILMEMBER BATES: But that's up to --
22 ATTORNEY WEED: That's fine with me. The
23 basic reason for the roof is to clearly indicate what
24 is this business, because whoever's in charge of it's
25 responsible for everything that happens literally

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under that roof or in this case, you know, in the patio too. There's no diminution of the responsibility.

COUNCILMEMBER BATES: And I lied. I've got one more if you'll bear with me, and that's number (4) under that same section. It says, "Where no other distance is provided, the patio/open area cannot be located within 1,500 feet of any residence." If that -- and I'm thinking down the road when we get mixed-use development, if that patio was part of a mixed-use development, they wouldn't then be allowed to have the patio there.

ATTORNEY WEED: And that's perfectly true.

The unfortunate reality, though -- what you have to worry about, I write ordinances not for the majority of people who are going to do the right thing but for the minority who are never going to do the right thing. And what's going to happen is that at 2:00 in the morning, there will be butt-thumping disco coming out of the patio of some establishment that will keep Brian Bates awake, and the idea behind this is to prevent that from happening or to curb it as much as possible.

And that's a term of art actually.

COUNCILMEMBER BATES: Thank you. I'm done

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at this point.

COUNCILMEMBER ALEXANDER: Under the suggested fees, the administrative fee for application for a license or renewal, do we not want to specify from the beginning that that is nonrefundable?

ATTORNEY WEED: I say it in a couple of different places, but I mean, you know, repetition is good for learning. That's fine with me.

COUNCILMEMBER ALEXANDER: So if I am a --

ATTORNEY WEED: Would you refer me to what page you're on?

COUNCILMEMBER ALEXANDER: No. I'm on your chart.

ATTORNEY WEED: Oh, okay. You switched on me. Okay.

My memo won't matter after you adopt the ordinance, so what we'd end up having to do is we'd make a modification to that section of the ordinance. So 3-6, I would just add some language about nonrefundability somewhere in that area. So yes, I will do that.

COUNCILMEMBER ALEXANDER: So a business comes in. Administrative fee for application for license or renewal is $100 for a business; is that correct?

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ATTORNEY WEED: I believe that is correct. Yes.

COUNCILMEMBER ALEXANDER: If I am a server and I come in, I have to pay $100 for my application for my permit or renewal and then $100 for my background check?

ATTORNEY WEED: You have to pay an admin fee for an application for -- If you are a server, you would pay $100 for the employee permit and an additional $100 fee for your background fee check. That's $200.

COUNCILMEMBER ALEXANDER: Dekalb County's 35.

ATTORNEY WEED: You can make it whatever number you want, but I feel quite confident that they're not recapturing the cost of the regulation with $35.

COUNCILMEMBER ALEXANDER: Well, I just feel like that we're charging an individual server more than we're charging the business.

ATTORNEY WEED: No, ma'am. I mean for the administrative aspect of it, arguably, you are, but the business itself has got to pay the actual fee. So you're now charging up to $5,000, four thousand, three thousand depending upon whatever the fee is.

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The fees are entirely under the discretion of the Council. I mean I'm always going to recommend to you, as my client, that you get the most amount of money you can from businesses that sell mind-altering drugs because you're going to have more problems with those businesses than you've got with the shoe-shine store. That's just life. But you can set the fee at whatever it is you prefer.

COUNCILMEMBER ALEXANDER: And I'm taking it the permit belongs -- the card belongs to the server, so if they stop work at one restaurant in the city, that is applicable; they can use it at the next restaurant.

ATTORNEY WEED: No, ma'am, not at all. In fact the permit belongs to the City and it is assigned to them for a particular restaurant. If they wanted to work in more than one restaurant at a local location, you know, they wanted to work, be a waiter at three different locations, they'd have to have one in each location.

COUNCILMEMBER ALEXANDER: And pay three different background-check fees.

ATTORNEY WEED: That is correct.

COUNCILMEMBER ALEXANDER: I don't like that.

ATTORNEY WEED: And we can change it.

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COUNCILMEMBER BATES: Is there a way to have a City of Doraville server's permit that is generic that would be applicable to any establishment in the city?

ATTORNEY WEED: Yes.

COUNCILMEMBER BATES: And the con of that would be?

ATTORNEY WEED: Less revenue for the City. It's as simple as that. And also the risk is, you know, two times/three times as great so to speak. If a waiter or waitress is working at multiple locations, the risk is exponentially greater based upon how many locations they're at, and you still -- essentially that risk then is kind of transferred on to the city.

You know, the idea behind the fees essentially would be, A, to -- a regulatory fee is there to cover the cost of regulation. If it only really costs $35 to do it, then the fee will only be lowered to that cost. With regard -- the state law clearly provides, however, you can go up to $5,000 for a license fee. It's silent as to what you can charge with regard to individual employee fees, but I'm sure -- you know, technically I think you could charge up to $5,000 for those as well.

COUNCILMEMBER FLEMING: Well, I don't think

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the employer generally pays for permitting. For instance, like beauty parlors and salons and so forth like that, they have to renew their license, their permit, on an individual basis, so they're absorbing the cost.

So I'm not so sure that a restaurant would be willing to pay, you know, a hundred-dollar renewal fee every year for their servers, so they're going to try to stick it to their employee, probably.

So in that aspect, for the renewal, I think that, you know, for your initial background check for a hundred dollars, I don't see a problem with that, but $35 permit fee and renewal fee of $35, I would feel that that would be more applicable. That's my opinion on that.

MAYOR JENKINS: How much do we charge now?

ATTORNEY WEED: You've got investigative costs, $100 per owner/applicant; annual administrative fee of $200 per year payable at the same time of the license fee. And that is it as far as I can tell with regard to that subsection.

MAYOR JENKINS: We've never had any problem. How much did you say they were paying for the permit, not the background?

ATTORNEY WEED: Investigative costs are $100

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per owner/applicant, and admin fee of $200 per year payable at the time the license fee is paid. So I'm going to make the assumption that that fee is paid by the licenseholder.

MAYOR JENKINS: The server.

ATTORNEY WEED: No. The $200 I think is paid by the licenseholder --

MAYOR JENKINS: Well, the $100.

ATTORNEY WEED: -- and I think it's $100 for the investigatory fee.

MAYOR JENKINS: Okay. Same thing you have in that.

ATTORNEY WEED: Yes, sir.

MAYOR JENKINS: All right.

ATTORNEY WEED: But there is --

MAYOR JENKINS: We've never had --

ATTORNEY WEED: -- an additional --

MAYOR JENKINS: -- any trouble. We've --

ATTORNEY WEED: But there is --

MAYOR JENKINS: -- never had any trouble.

ATTORNEY WEED: -- an additional $100. There's a background-check fee of $100 and then there's an additional administrative cost of $100.

MAYOR JENKINS: Yes.

ATTORNEY WEED: So there's two under the

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draft.

MAYOR JENKINS: Okay.

COUNCILMEMBER SPANGLER: What do we charge for a background check? Do we charge $100?

ATTORNEY WEED: That's what -- that's what it says as far as I can tell.

COUNCILMEMBER ROCHE: I'm sure as we get deeper into this, we'll probably have more questions.

I guess my overall thought on this is that I'm not really sure what problem we were trying to solve by rewriting this. I mean I think we were okay with, you know, once we straightened out the penalties and everything.

And perhaps this is simpler than what our current ordinance is. The problem is we don't really have a list of what's actually changed. I'm thinking in terms of not just the organizations and businesses we already have in Doraville but I'm also thinking in terms of, you know, there's this little piece of land over here and hopefully we'll get things like maybe, you know, an Outback Steakhouse, or a lot of times in a big office park they may have a big fancy restaurant or whatever. And it would seem to me that the more reasonable and practical that we could make the process of applying for a liquor license, the better.

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1 I mean it's considered being business-friendly.
2 At the same time, frankly, there's some
3 places in town that serve alcohol now that I'll go out
4 on a limb and say if it was up to me, they probably
5 wouldn't be here. But of course it's not up to me.
6 That's what the law is all about.
7 So I think what I'd like to ask for is
8 basically a list of what's really changed from what we
9 have today versus, you know, this new thing, because
10 for me to try to sit down and pick through all this
11 or, for that matter, the 42 people that -- the 42
12 businesses in town that currently have a liquor
13 license, just to try to understand what's changing, I
14 think that would be very valuable.
15 I would like to hear about, you know --
16 either tonight or whenever, I would like to hear more
17 from the police as far as their input on this, you
18 know, what we're trying to -- You know, are there
19 specific problems that we are or are not solving by
20 adding or rewriting this ordinance?
21 And I also think of course it does
22 definitely need to be -- I mean this is 78 pages, it's
23 going to affect a lot of businesses. Just the thing
24 we just talked about a minute ago, the patio. I mean
25 I know of a restaurant -- in fact I eat there all the

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1 time -- where you actually walk through the patio to
2 get in the front door. I guess they could lock the
3 back door -- or lock the patio and make you come in
4 the side door. I don't know. Like I said, I just
5 don't know how practical some of this stuff is.
6 So that's what I would ask for: a general
7 list of what's changing, that we get it on the web so
8 the citizens and businesses have a chance to look at
9 it and, you know, see what -- you know, because we
10 charged out there before with some other issues in
11 zoning, and it wasn't till after we passed it, we
12 realized, you know, there's some things that -- some
13 unforeseen circumstances or effects. So that's what I
14 would ask for as far as moving forward.
15 COUNCILMEMBER BATES: Well, one of the
16 biggest -- and I will state that I requested the
17 rewrite for two reasons. One was the previous -- the
18 ordinance that's in existence today requires the
19 licensee/applicant to live in the city of Doraville.
20 It is extremely onerous, it is almost impossible to
21 enforce, and when we were having our discussion
22 regarding the penalty provisions, we realized that was
23 in there, and quite frankly, I don't think a valid
24 enforcement option.
25 The other thing was it was duplicitous in

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1 that there were sections for malt beverage and wine
2 and several sections for distilled spirits that were
3 exactly identical, and to consolidate those into a
4 single document seemed to make a lot more sense than
5 having two specific sections that dealt with the same
6 thing on an enforcement side.
7 So from my standpoint, those are two of the
8 items that have been addressed and appropriately.
9 So I think Mr. Weed has added in some
10 valuable tools for us to consider and look at, so I
11 appreciate your efforts.
12 COUNCILMEMBER FLEMING: I agree with you in
13 a lot of respects, Mr. Bates, but we have an existing
14 ordinance right now, 3-272, for penalties.
15 And truly I believe that's where the
16 violations, section 4 of this 3-47, because we're
17 defeating our purposes, the 16 that have been cited,
18 we still are not going to make any type of decision or
19 hear their cases until we --
20 To me, I think we should pull 3-47 out of
21 this ordinance and put it back into 3-72 -- 3-272 so
22 that we can make that decision and move forward with
23 the penalty section.
24 COUNCILMEMBER BATES: And respectfully, I
25 thought that we had we had -- we had done that. I

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1 think we need to have the Clerk check the minutes from
2 the 17th of August.
3 COUNCILMEMBER FLEMING: But Mr. Weed, as far
4 as you're concerned, 3-272 is a standalone ordinance;
5 correct? 3-272, penalties for the alcoholic beverages
6 under sale to minors.
7 ATTORNEY WEED: On October the 17th of 2005,
8 3-272 according to MuniCode provided a general
9 penalty. And then my understanding is I believe that
10 code section was changed by the Council --
11 COUNCILMEMBER FLEMING: Are you saying
12 October 17th of this year?
13 ATTORNEY WEED: No, ma'am. Let's just --
14 we'll go through the whole thing.
15 What's on MuniCode right now -- and this is
16 not accurate. What's on MuniCode is that 3-272 was a
17 general penalty, and that was current as of October
18 the 17th of '05.
19 Then the Council apparently in 2008-05 made
20 an amendment that section making the fine $2,500.
21 Now, your recollection which may be
22 perfectly accurate is that we went ahead and changed
23 that number down to the proper number which would be
24 no more than $1,000.
25 COUNCILMEMBER FLEMING: That's correct.

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ATTORNEY WEED: I don't happen to remember that and I don't have that ordinance in my file. That doesn't mean to say that we didn't do that, however.

COUNCILMEMBER FLEMING: Okay. The final ordinance that you gave us was on July the 20th, '09, or at least that is what the date is. It came on the agenda, as we both concurred, item number 7 on August the 17th.

ATTORNEY WEED: The first version of what I attempted to do was merely change --

Philosophically, what I always try to do is only change the problem areas, not do comprehensive rewrites, and I tried to do that the first time when I gave you that ordinance on August the 17th of 2009.

COUNCILMEMBER FLEMING: Correct.

ATTORNEY WEED: The Council didn't want to pursue that, and I certainly got the impression that you wanted a comprehensive rewrite because of the issues that Councilman Bates has already pointed out.

If the -- if we made a motion and a second to adopt an actual ordinance that changes the improper penalty section that got adopted before I was your attorney in 2008-05, if you've done that sometime, I don't recall it, but we'll have to check the minutes. I don't disbelieve you. I just don't remember that.

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COUNCILMEMBER FLEMING: Please do, because I'm under the impression that the -- that the fine is not $1,500 to $2,500. It's $1,000. And then we were going to add the time for suspension or revocation to this particular ordinance is what my impression was.

COUNCILMEMBER ROCHE: Well, it was going to be up to 15 days, I think, and up to, so that we had some discretion on that.

ATTORNEY WEED: And what might have occurred is that the Council may have made a motion and second without having an ordinance in front of you. Sometimes you do that. You'll just decide to change an ordinance, which is fine; you've got that prerogative; and then I'll follow up later with an actual ordinance that enacts what you said you wanted to do.

COUNCILMEMBER BATES: That's what happened.

COUNCILMEMBER SPANGLER: So --

COUNCILMEMBER ROCHE: Yeah. We never --

ATTORNEY WEED: And that may --

COUNCILMEMBER ROCHE: -- had the follow-up.

ATTORNEY WEED: I suspect that's what occurred.

COUNCILMEMBER SPANGLER: Mr. Weed, I'd like to make a motion to postpone this until another

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meeting, be it a special-called meeting or whatever, until we can get our facts straight.

ATTORNEY WEED: Yeah. Mr. Spangler, if you change this, it's your prerogative. If you never touch the alcohol beverage ordinance, it's your prerogative. It's up to you. No offense to me. I don't care.

COUNCILMEMBER SPANGLER: I feel like we've spent enough time on this and we need to get on with our other business, so we can make it a special-called meeting and have those in the audience that would like to be here attend and whatever businesses might want to be here.

ATTORNEY WEED: I'll close out with one other thing, though. At a minimum, I do think you need to revisit the August 17th ordinance because that clearly focused purely on things that I think are direct issues that need to be addressed legally whatever you do.

MAYOR JENKINS: August of 2009?

ATTORNEY WEED: The August -- the August 17th, 2009 ordinance that I provided to you before.

COUNCILMEMBER ROCHE: I mean clearly we need to fix things like the residency requirements or whatever.

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Again, I would feel a lot more comfortable if we had a list that would just -- you know, what's the effect of this, the new changes or whatever, from the rewrite also?

ATTORNEY WEED: I'm happy to attempt to do that, but bear in mind it's a completely different ordinance.

COUNCILMEMBER ROCHE: But we'll have to explain this to 42 people.

ATTORNEY WEED: I would do an outline of the current ordinance that you adopt and give that to them, and that's what they'd have, but I wouldn't com- --

COUNCILMEMBER ROCHE: At least that would be something.

ATTORNEY WEED: I wouldn't do a comparison of what they had in the past, though.

But I'll do whatever you like. If you want me to compare the two ordinances, I will attempt to do that, but they are two completely different ordinances.

MAYOR JENKINS: Do I have a second on that motion?

COUNCILMEMBER PITTMAN: Second.

COUNCILMEMBER BATES: To postpone?

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COUNCILMEMBER FLEMING: To postpone.
COUNCILMEMBER PITTMAN: Yeah. Second, because this is a --
MR. ANDERSON: Is there a sign-up?
COUNCILMEMBER ROCHE: Yeah. Are we going to let citizens speak?
COUNCILMEMBER PITTMAN: There was a sign-up but he --
MAYOR JENKINS: Did you sign up?
COUNCILMEMBER PITTMAN: -- didn't sign up on it.
MR. ANDERSON: The sign-up sheet -- I apologize. The sign-up sheet was very confusing and I meant to sign up for this.
MAYOR JENKINS: If we postpone, is there any reason to have comments on that particular item?
ATTORNEY WEED: That's purely within the prerogative of the Council. There's no constitutional or legal requirement that you hear from the public on any individual issue except for rare occasions like zoning and things of that nature.
MAYOR JENKINS: We're going to be bringing this up again, Mr. Stuart. You can comment on it at that time.
Yes?

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MS. FLYER: If anybody does want to look at the minutes from August 17th, I was able to pull it up on my wireless, and I didn't find any reference to actually making a motion. There was --
MAYOR JENKINS: We did not make a motion.
MS. FLYER: -- some discussion of the residency requirements but nothing about the penalties, and it doesn't look like it went to any vote. If anybody wants to look through it, they're welcome.
MAYOR JENKINS: Thank you.
Call the roll, please.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: All right. Bob, you have

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the next item.
COUNCILMEMBER ROCHE: Yeah. The next item is Financial Reports and City Charter.
The City Charter provides that the Mayor needs to keep the City Council and the city apprised of basically our financial situation. And as was mentioned earlier, we have not received any good financial report for quite some time.
We did cover some of this in a special-called meeting last Tuesday, and, you know, we had several questions. Eventually I just stopped asking questions because I was concerned about -- you know, things were kind of getting a little bit out of hand and I didn't really want to push the matter any further. And I had requested that Mr. Maxwell be here tonight because we've got some questions about the other actual -- the reports that were provided. And since Mr. Maxwell's not here, I guess I'll ask the questions for the record and then perhaps someday we'll get an answer.
In the report that was provided, we have a suspense account balance. And a suspense account essentially is if you have some sort of transaction and you're not quite sure how to classify it, you just stick it in a suspense account and then you come back

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a day or two later and you transfer the money out to wherever it belongs.
And the suspense account balance that was given to us off a balance sheet was $468,000, almost four hundred and seventy -- sixty-seven thousand dollars. That just seems like a pretty large amount to be in suspense.
Since I've been up here, I've never seen any kind of balance sheet report or whatever from the accounting that had this kind of money. Essentially that's unclassified money.
Typically what you do is if you're not sure where it is, you just look -- you know, if it's the electric bill, you just look and find your last electric bill and figure out where the accounting was for that. So I'm not really sure why that didn't happen.
There's a cash in clearing account balance of $2,835,000 and change, and I guess I'm just concerned about what two million eight hundred is doing in a clearing account.
MAYOR JENKINS: Did you say a clearing account?
COUNCILMEMBER ROCHE: Yeah. It's called cash in clearing account, or cash clearing account I

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1 think is how it was listed on the balance sheet.
2 And this is a significant amount of money,
3 and again, we don't have answers on that either.
4 Now, there are a couple of other balances
5 like state taxes payable was about $161,000.
6 The accrued retirement is a negative amount
7 of $560,000, and I'm not sure about that, either.
8 And then we have 941 taxes payable. I
9 understand that we have some confusion about that, and
10 that's $829,000.
11 So right here, we're looking at almost -- if
12 I add up just those, just roughly about three/three-
13 and-a-half million dollars that we don't know what
14 this money is for, why it's there. We don't have an
15 explanation.
16 I'm sorry. Do you want to answer a dumb
17 question?
18 CLERK BLACKMON: I can answer the $468,000
19 is most likely insurance because we were coding
20 insurance and some utility bills individually by
21 departments and we are no longer doing that. We are
22 putting it in an unclassified code until he redoes all
23 the chart of accounts when we get our new software,
24 because it was taking too long to split it out by
25 department because the bills do not come by

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1 department.
2 COUNCILMEMBER ROCHE: Well, will the new
3 software have an automated allocation process so that
4 when you get --
5 CLERK BLACKMON: He's going to --
6 COUNCILMEMBER ROCHE: -- the bill, it's
7 going to . . .
8 CLERK BLACKMON: -- reclassify the chart of
9 accounts. I think y'all knew about, you know, there
10 was certain things he was spreading out that was all
11 lumped together at one point. That'll be all in with
12 that.
13 But right now, every time I pay a Blue
14 Cross/Blue Shield bill or Aflac or Greater Georgia
15 Life, it goes into an unclassified account. So that
16 is where that is.
17 COUNCILMEMBER ROCHE: And before, it was at
18 least classified so we knew what it was.
19 CLERK BLACKMON: Uh-huh.
20 COUNCILMEMBER ROCHE: Well, that's all the
21 answers we're going to get tonight, it looks like, so
22 -- but --
23 MAYOR JENKINS: Can you give me a list of
24 those that you are referring to and I'll --
25 COUNCILMEMBER ROCHE: Sure.

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1 MAYOR JENKINS: -- I'll get you the
2 information.
3 COUNCILMEMBER ROCHE: Yeah. If you just
4 look on the balance sheet you provided, you'll see
5 that some of --
6 MAYOR JENKINS: Okay.
7 COUNCILMEMBER ROCHE: -- these balances are
8 just abnormal balances. And obviously we're just
9 concerned about that because in fact it seems like
10 every time we get a report, we get a different dollar
11 amount, and you know, I don't know how...
12 You know, we spend over a million dollars a
13 month and we need to be able to know how much, you
14 know, money's coming in, how much money's going out.
15 And not so much we the Council, but the department
16 heads. They need to know how much they've spent for
17 copy paper. They need to know how much they've spent
18 for uniforms and fuel, et cetera, et cetera, so that
19 they can manage to now go over budget.
20 In fact, I think last year, one department
21 did go over budget and the main reason they cited was
22 that they weren't getting their financial reports on
23 time. I think we need to start getting our financial
24 reports on time, and, you know, whatever it takes to
25 do that, we need to do.

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1 So I guess that's as far as we'll get
2 tonight on that, so --
3 MAYOR JENKINS: Are you finished?
4 COUNCILMEMBER ROCHE: Well, there's nobody
5 to ask. I'm asking an empty chair, Mayor, so I guess
6 I'm finished.
7 MAYOR JENKINS: Murray?
8 ATTORNEY WEED: Mr. Mayor and Members of the
9 Council, the Financial Policy ordinance, I've sent you
10 an historical encapsulation of how that came to be and
11 where we're at with that on June the 5th of 2009.
12 I'll refer back to that e-mail I sent you, very
13 briefly.
14 We do have a Financial Policy statement, for
15 lack of a better term, that was apparently adopted on
16 August the 2nd, 2004. At least a revision was
17 discussed on that date. We've checked, and that date
18 refers back to a previous document that appears to
19 have been adopted originally on June 21st of 2004 and
20 revised on August the 2nd of 2004. I've given you
21 copies of that document and a memo to the Council from
22 my predecessor drafted on July the 25th of 2005, where
23 a markup was done in an attempt to explain some
24 changes between the previous document and the one that
25 apparently that was adopted in the summer of 2004.

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1 Historically where this matter has been, a
2 number of Councilmembers, particularly Councilmembers
3 Bates and Roche, have had an interest in working on
4 the policies to make sure that we had adequate
5 policies. I did a draft of an ordinance for you on
6 July the 20th of 2009 and we hadn't really revisited
7 this matter in some time and just wanted to put it on
8 an agenda to find out if you wanted to keep working on
9 it, if you just wanted to, you know, continue moving
10 forward as-is underneath the existing policies, if you
11 wanted to make relevant changes.
12 I had a number of suggestions and ideas that
13 came from Councilman Roche. The ones that I felt were
14 not otherwise -- that would pass, you know, legal
15 muster, I certainly tried to include in the ordinance
16 that I drafted for your consideration.
17 And essentially we're at a point where it's
18 up to the Council to let me know if you want to move
19 forward with this or if you want to continue to wait.
20 So I really just wanted to put it on the agenda to let
21 you know that it was out there.
22 COUNCILMEMBER FLEMING: Well, I have a
23 question on page 9 of that ordinance.
24 ATTORNEY WEED: Yes, ma'am.
25 COUNCILMEMBER FLEMING: It's number 3, where

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1 it says no official of the City of Doraville will be
2 interested directly or indirectly in any transaction
3 with, sale to, work for or contract of the City of any
4 contract of government or service involving
5 (inaudible).
6 THE REPORTER: Or what? I'm sorry.
7 COUNCILMEMBER FLEMING: It just rambles on.
8 I'm sorry, Mr. Weed. It doesn't ramble on.
9 ATTORNEY WEED: I don't think I can actually
10 take blame for that because I think that's what your
11 existing document says, but it continues to ramble on.
12 I certainly agree with that.
13 COUNCILMEMBER FLEMING: So I wanted to
14 question "indirectly."
15 ATTORNEY WEED: Okay. I'm sorry.
16 COUNCILMEMBER FLEMING: "No official of the
17 City of Doraville." Are you referring to the seven
18 that are sitting here?
19 ATTORNEY WEED: Well, correct.
20 The main purpose of this is to reflect the
21 current ethics ordinance in that if -- I'll just pick
22 somebody -- Councilman Pittman, for example, had a
23 restaurant business and wanted to sell meals to the
24 jail to provide meals for the jail. The idea
25 generally is that that would be a direct interest in

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1 that contract with regard to the City, and the fiscal
2 policies would prevent -- they would frown upon that.
3 So even if it was an ethical violation per se, the
4 fiscal policies, you would seek to get somebody else
5 to do that.
6 And the same thing with an individual
7 employee. Let's say we had a fire department and a
8 fireman had a part-time job as a contractor. You
9 would not look to that person who had a direct
10 interest to do the work but you'd try to seek it in
11 the economy of the outside world. And that's in
12 keeping with the general guidelines of the ethics
13 ordinance.
14 COUNCILMEMBER FLEMING: Sorry.
15 COUNCILMEMBER ROCHE: Well, the reason I had
16 originally put this on the agenda was because I was
17 concerned about -- you know, we weren't sure which of
18 these two financial policies was really the financial
19 policy, because I know I had requested it several
20 times. I think we decided that one was and one
21 wasn't.
22 I was concerned about some of the processes
23 by which we spend our money, basically; that we want
24 to make sure that any time we spend over $5,000, we
25 usually put it out for RFP. I mean there are some

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1 rare exceptions where we may not want to do that. But
2 when you put everything out for RFP, not only does it
3 make sure that there's not the appearance of anything
4 untoward going on here but it also gives, you know,
5 the businesses out there a fair shake at being able to
6 have the opportunity to do business with the city of
7 Doraville.
8 Later on, there were some rumors floating
9 around as far as this building that was built over at
10 the Police Department, and, you know, to find out what
11 was going on, and some of the rumors were not very
12 nice.
13 So I went out and I put together a -- did an
14 Open Records request to review all those records, and
15 I can say that as far as I'm concerned, the officers
16 involved did not do anything wrong.
17 Having said that, though, I think that the
18 policies and procedures that they were operating under
19 were not strong enough. I think it definitely needs
20 to be improved upon, and I believe that that was part
21 of the draft ordinance also, which I was happy to see.
22 When there's a good ordinance like that,
23 then everyone knows the rules, everyone -- you know,
24 not only us but our potential vendors and our existing
25 vendors. You know, we have the right to make sure

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that we spend tax dollars, you know, business income, whatever, fairly and so that we get the best value for our money.

And that's basically our responsibility up here is to make sure that we manage your money correctly or at the best of our ability. I don't think it will ever be perfect, but I think we could make great improvements in what we had -- things such as opening of bids. You know, I think it's very important or at least a good thing that we open bids during a regular council meeting even if it takes five minutes or whatever. Opening bids in a back room with the door closed, I'm not so happy about, you know, so there's different ways to go about that, so --

I like most of what I read in the new ordinance. I think that we should, just like we were talking about with the alcohol ordinance, take some time, go through and figure out what we like, what we don't like; make motions on each issue if we need to, and then see if we can't get a nice, clean new ordinance up and running.

COUNCILMEMBER BATES: And I would actually like to reiterate what I talked about previously. And with something that is as specific and important as this, I would like to have people who understand and

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deal with finances including from the banking and accounting side to form a citizens committee that will help us review and craft a financial investment policy because this does also include the investments of the city, so that we can get the most comprehensive information from people who are knowledgeable in that industry to help us craft a policy that makes a lot of sense and is actually enforceable and complies with typical finance -- financial policies from the banking industry.

So I will reiterate my motion to farm this out to a -- to establish a finance committee, finance and investment committee to be composed of three citizens and two Council members.

COUNCILMEMBER ROCHE: And who are you proposing for this committee?

COUNCILMEMBER BATES: I'm sorry?

COUNCILMEMBER ROCHE: Who are you proposing for the committee?

COUNCILMEMBER BATES: I would -- I would have two names off the top of my head. I would like to talk with them if they were interested, but I've got two, two people that I would suggest already.

COUNCILMEMBER ROCHE: I think it would be better to wait until we had those names of people for

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us before we made a vote on it, so --

As someone pointed out to me, we already have a citizens committee. It's called the Doraville City Council. You know, that's -- so --

But still, if we want to go that way, I think that we should know the names of the people that are going to be on the committee before we form that committee, and the Council members too, by the way.

And I volunteer. I would like to be included on that committee.

MAYOR JENKINS: What did you say? Two Councilmen and how many citizens?

COUNCILMEMBER BATES: Three citizens, sir.

MAYOR JENKINS: I have no problem with that.

COUNCILMEMBER BATES: And the requirement would be that the citizens would have a financial background either in accounting, auditing or banking.

MAYOR JENKINS: How do you want -- try to get them tonight or what do you want to do?

COUNCILMEMBER ROCHE: I guess we'll have to postpone it till the next meeting.

COUNCILMEMBER FLEMING: Well, Mr. Bates --

COUNCILMEMBER BATES: Yes, ma'am.

COUNCILMEMBER FLEMING: -- I appreciate your concern. I appreciate your comments about a citizen

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committee and Council member committee.

We have hired a legal firm that has numerous attorneys and specialties wherein, and this 22-page ordinance dated July 20th isn't just off the top of someone's head. It's been reflected upon and it's been -- it's extremely detailed. And personally, I found the ordinance to be -- other than the first question that I asked, I had no other questions whatsoever on this ordinance and I was ready to -- though I'm not in favor of waiving first readings, on this particular item since it's been on the table since July the 20th, I was ready to waive the first reading so that we could go ahead and vote on it.

COUNCILMEMBER ROCHE: And frankly, I support that position.

ATTORNEY WEED: And I'd like to just point out two particular things. The draft ordinance, on page 8 and again on page 10, those are different options that the Council can select from. For example, on page 8, I have four different alternatives. So if you do adopt the ordinance tonight -- and also on page 10 --

COUNCILMEMBER ROCHE: Right.

ATTORNEY WEED: -- you'll notice the highlighted provisions, I wanted to point that out to

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you directly -- you'll need to pick and choose from which ones you want with regard to those sections if you do take a vote tonight.

COUNCILMEMBER ALEXANDER: I'm not ready to adopt this ordinance tonight. One of the things that I think we should include, especially pursuant to our meeting the other night, is under the investments. I think we need to specify better criterion here as far as where the City's money is placed.

It does mention collateralization, which is what the auditor mentioned, but it doesn't mention taking things into account like the Texas ratio of the bank, the number of branches they have or -- or any other criteria that I think we need to be extremely sensitive to now in the economy.

So I'm not ready to vote on it as it is tonight and I had additional questions also.

I don't know how you would word that, Mr. Weed, as far as wanting to include -- I mean you've covered the basic things of collateralization, the FDIC and things like that, but I think we need to bolster that up a little bit better and to take more than just those items into consideration.

And I believe Mr. Roche mentioned, too, that we don't want to necessarily put all our eggs in one

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basket either as far as banking institutions.

COUNCILMEMBER ROCHE: Yeah, and you know, I mean if that's what the Coun- -- if the Council wants to go with this outside committee, obviously I guess if that's what the Council wants to do. I personally would just rather continue on with this just like we do every other ordinance and just work our way through it.

COUNCILMEMBER PITTMAN: Well, I think we need to have a separate time to work through this. I'm not ready to vote on this tonight.

COUNCILMEMBER SPANGLER: Do you want to make a motion?

COUNCILMEMBER BATES: I'll withdraw my motion.

COUNCILMEMBER PITTMAN: I make a motion that we bring this up at another time, a special meeting or at an earlier meeting maybe prior to a Council meeting.

COUNCILMEMBER SPANGLER: I'm going to second that.

MAYOR JENKINS: Anymore discussion?

COUNCILMEMBER ALEXANDER: If I could have one question answered --

MAYOR JENKINS: Yes.

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COUNCILMEMBER ALEXANDER: -- because this will be a little bit more in my additional questions.

On page 6, the definition of user-based fees and service charges. It talks about an attempt will be an annual review of fees and charges to ensure that the fees provide adequate coverage of cost.

Does that affect our sanitation? Is sanitation considered a user fee?

ATTORNEY WEED: According to your Charter, sanitation and the recovery of those charges is actually a tax, so I would lean towards it being a tax as such.

Now, could it also meet the definition -- could it also be a user fee as well? I think it could, because the way the Charter is set out, it says that it can be a charge and/or a tax. So you can treat it as a tax if that's helpful to you. I think it can be both.

COUNCILMEMBER ROCHE: And I guess the only thing I'll throw in here is that some of this, some of our financial policies belong in an ordinance but I think that other policies belong in a policy.

For instance, one of the things I see that most municipalities do that we don't do at all is that typically around February the Council, you know, has

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maybe a weekend or whatever and they go away and they kind of sit down and hammer out what the priorities are going to be from -- you know, overall for the City and then priorities for each department head, and then the next phase of that -- And then set them up and say, well, the library, we want more people, less people, more hours, whatever it is, and then you give the list of priorities to each department head.

And then you say, department head, based on what we're projecting for revenue, this is about how much money you'll have to spend. That way, a department head can say, okay, fine. I've got this much money to spend. Here's my list of priorities. Okay. What do I have to do to make sure the first priority happens? What do I have to do with the second one?, whatever.

As far as the detailed accounts within the department, I would assume the department heads would pretty much handle that themselves. I don't see why we need to get involved at that level.

And then typically I guess March or so, that's when the first draft of a budget is presented to the Council, and that way, there's plenty of time to have budget hearings, you know, discussions, make adjustments, et cetera, et cetera, so that when June

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30th rolls around the budget's already been decided on, worked over and in place; everyone knows and everyone's moving forward.

This last time, our budget was late. I'm not sure. There was questions about which -- whether we're breaking tax laws or state laws or ordinances or whatever by doing it late, but, you know, there are specific things that have to be advertised, et cetera, et cetera.

So to me, a budget schedule would be part of what this overall process would be, too. I don't think it necessarily would belong in an ordinance. I'd have to defer to Attorney Weed on that. But I think that this is a bigger thing than just, you know, throwing out a new ordinance out there. I think we need to look at it from a holistic. One piece of the puzzle would be the ordinance. I think we also need to look at the policy itself. So I'm in agreement that we probably need a separate, standalone meeting at least if not one or two work sessions to work through this.

MAYOR JENKINS: Don't we have a motion and a second?

COUNCILMEMBER PITTMAN: Yes, sir.

COUNCILMEMBER SPANGLER: Yes.

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COUNCILMEMBER ROCHE: Yeah.

MAYOR JENKINS: Anymore discussion?

MR. ANDERSON: Once again, the sign-up sheet?

MAYOR JENKINS: There's nobody signed up on that one, sir.

Call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates.

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Okay, Murray.

ATTORNEY WEED: Mr. Mayor and Members of the Council, the next item is Over the Air Reception Devices. This ordinance was originally given to the Council on July the 17th of 2009.

One of the reasons why some of these old -- I'd purposely put these older items on the agenda so that the Council would be aware that I had not forgotten about them, and if you wanted to take action on them, fine, and if you chose not to, fine, but I wanted everybody to know that I have brought them as far as I could bring them and now they're squarely in the hands of the Council.

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There are a couple things I want to -- additions I want to make orally a report on with regard to the ordinance. I found a couple typos in there which I'll just fix along and along. But one thing that I want to specifically mention was, as a placeholder only, on Section 2-283, amateur radio antennas prohibited, I prohibited broadcast radio or amateur radio antennas. Now, I did that, once again, only as a placeholder so we could have the conversation we're about to have right now.

There are two different laws in play here. The law that this ordinance is based on you'll recall is to really govern predominantly video reception devices, and it's a federal law. It's based upon the 1996 Over the Air Reception Devices, OTARD, rule that was promulgated in 47 C.F.R. Section 1.4000 in effect since October 1996 and all of the other FCC memos and rulings that have dome down since that day.

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Putting that aside for the moment, the other thing we need to be aware of is the federal statute which deals with amateur ham radio, and that statute is 47 C.F.R. 97.15. Now, 47-97.15 clearly holds that a local government cannot entirely prohibit amateur ham radios. Can't do it. You can regulate those devices, however. There's a limitation of height of 200 feet if the antenna is near an airport and the ham radio applicant has got to get a permit, essentially, and report in to the FAA if you're close to an airport.

Other than that, there are no specific height limitations dictated by federal law. What the federal law says is that's up to the local government to decide, and they assume that the local government will act reasonably. And that's Subsection 97.15 Subsection B. Essentially it says that a station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur service communication and state and local regulation of the station antenna structure must not preclude amateur service communication rather but reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose. So in

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1 typical federal manner, they didn't tell us what to do
2 nor do they tell us what not to do. They essentially
3 said make your best guess and use your best reason.
4 So bearing that in mind, I mean I'm not
5 encouraging that you actually adopt Section 2-283,
6 that subsection but what I would provide to you that
7 you should do is that you have two other sections in
8 your zoning code now that deal with ham radio
9 antennas. I think those two sections need to be moved
10 out of the zoning code and put into either this ordi-
11 nance or a similar ordinance if you want to regulate
12 those devices.
13 Once again, you can regulate them but the
14 regulation's got to be the minimal regulation that
15 accomplishes the legitimate governmental goal. What
16 are some governmental goals? Well, the devices are
17 not attractive. The response to that argument is that
18 beauty's in the eye of the beholder. Also the
19 regulations can be based upon essentially safety
20 issues and health issues; therefore, you can regulate
21 that they be inspected, that they be constructed
22 properly and things of that nature. And arguably, you
23 could do a height regulation if you could find a
24 defensible reason to set that height. So I wanted to
25 mention that to you specifically.

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1 Right above that section is Section
2 2-282.
3 COUNCILMEMBER FLEMING: Mr. Weed, let me
4 stop you one second.
5 ATTORNEY WEED: Sure.
6 COUNCILMEMBER FLEMING: Page 8 is where your
7 typos are, and that is Section 5-282, and that whole
8 page should be 5-282, -283, -284 and -285. We're in
9 Building Code Section 5.
10 ATTORNEY WEED: Right; you're correct, yeah.
11 All those sections are dealt with under -- they
12 started out as being 5 dash whatever and they go to --
13 they go to --
14 COUNCILMEMBER FLEMING: I'm just correcting
15 you because --
16 ATTORNEY WEED: Right.
17 COUNCILMEMBER FLEMING: -- you said 2-282.
18 ATTORNEY WEED: Okay. Thank you. You're
19 correct. Yeah, you're absolutely right. Those
20 sections should be 5-282 and then 5-283 and 5-285,
21 et cetera; so thank you.
22 COUNCILMEMBER FLEMING: You're welcome.
23 ATTORNEY WEED: Bearing all that in mind, if
24 you'll look at 5-282 with regard to stick antennas,
25 you can regulate stick antennas as well underneath

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1 video reception devices because that is what they are
2 for, and you'll notice that conven- -- and what I
3 wrote here was that conventional stick antennas for
4 receiving nonlocal distant television signals are
5 prohibited. And that is allowed. You can do that if
6 you choose to underneath the video section of the SEC.
7 You do not have to do that, though.
8 So in other words, I wanted to point out
9 Section 5-282 and 5-283 to you, and if you adopt this
10 ordinance tonight, I'm actually recommending that we
11 leave 5-283 as a reserved item and that you make a
12 choice as to what you want to do with regard to 5-282.
13 COUNCILMEMBER BATES: I have a couple
14 questions for you regarding 5-281, and it's actually
15 going to be on page 6, Subsection (d) as in dog. It
16 says, devices shall be neutral in colors. Does that
17 apply to ham radio antennas as well?
18 ATTORNEY WEED: No, it does not.
19 COUNCILMEMBER BATES: Okay. So anything
20 dealing with ham radio is not included in this.
21 ATTORNEY WEED: That is correct.
22 COUNCILMEMBER BATES: Okay.
23 COUNCILMEMBER FLEMING: I believe if I'm not
24 mistaken -- and Mr. Haeberlin or Mr. Weed, you can
25 correct me -- but I believe that antennas are

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1 considered an accessory -- permitted accessory
2 structure in our zoning code book, a permitted
3 accessory structure. So with this, and that comment
4 I'm making, we've got a conflict.
5 ATTORNEY WEED: No, ma'am, I don't -- well,
6 I don't see it as a conflict. The basic rules of
7 ordinance interpretation are less specific gets
8 trumped by more specific, latter in time trumps some-
9 thing previous in time; and wherever a possible, if
10 there isn't a direct conflict between ordinances, then
11 you harmonize them. So even though something might be
12 permitted by the zoning code, it doesn't mean that you
13 couldn't have additional regulation on it elsewhere.
14 And bear in mind, what this really deals
15 with predominantly in this day and age are satellite
16 dishes. That's the purpose of this regulation. And
17 now we've limited that regulation down to frankly the
18 bear minimum regulation that we're allowed to deal
19 with, which is safety provisions and historic areas.
20 COUNCILMEMBER BATES: Because our -- I think
21 we've had this discussion quite a bit with previous
22 counsel, so I apologize. Because our neighborhoods
23 are beautifully scaped with trees and we have a
24 wonderful tree canopy, it's often difficult to place a
25 satellite dish in the rear or side yard and the only

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1 available position is on the roof or in the front
2 yard, but on page 4, Subsection (a), it clearly states
3 over-the-air reception devices should be installed in
4 side or rear yards and no closer to the lot line than
5 the minimum setbacks. Can we legally regulate --
6 ATTORNEY WEED: That isn't quite accurate.
7 COUNCILMEMBER BATES: Okay.
8 ATTORNEY WEED: It actually says they should
9 be installed in rear or side yards and no closer to
10 the lot line -- where the property is located except
11 as set out in 5-281 (m).
12 COUNCILMEMBER BATES: Well --
13 ATTORNEY WEED: And then when you turn to
14 5-281 (m) --
15 COUNCILMEMBER BATES: That's seven pages
16 away.
17 ATTORNEY WEED: Well, that's true. But when
18 you get there, it essentially says that if -- what the
19 federal law plainly says is that if the location --
20 the government can mandate the location, but if it
21 degrades the signal integrity, then you're exempt.
22 COUNCILMEMBER BATES: Okay.
23 ATTORNEY WEED: And the only exception to
24 that exemption would be if the only place where you
25 could get a great signal is on a fire escape, you

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1 can't do it. If the only place you can get a great
2 signal is in the middle of an ingress/egress to the
3 property and, you know, in the middle of the pavement,
4 you can't do it, that type of thing.
5 COUNCILMEMBER BATES: The other question
6 regarding that would be the structure supporting the
7 dish. Can we regulate that?
8 ATTORNEY WEED: To a limited degree. But
9 once again, the regulation for that is the same
10 regulation as essentially for the dish. In other
11 words, if the -- if a --
12 COUNCILMEMBER BATES: Let me clarify my
13 position.
14 ATTORNEY WEED: Okay.
15 COUNCILMEMBER BATES: There is a residence
16 where they have used various size, shape and colors of
17 2 X 4s to erect a platform in their front yard that is
18 adjacent to, next to the fence of the lot line, and it
19 looks like somebody let a kid loose with a hammer and
20 some nails and said, "Build it there."
21 Can we regulate those types of platforms?
22 COUNCILMEMBER FLEMING: And the satellite
23 dish is attached to this?
24 COUNCILMEMBER BATES: And the satellite dish
25 is sitting on top of it.

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1 ATTORNEY WEED: The answer would be -- in my
2 opinion, the answer is yes. I think clearly there
3 might be a fire safety hazard there. I mean at a
4 minimum, the wood would have to be treated wood. I'm
5 not John Calcaterra, but I imagine it would have to be
6 treated wood, it would have to be sunk into the ground
7 via some, you know, concrete footing.
8 COUNCILMEMBER BATES: So that's more of a
9 building code and not necessarily an over-the-air
10 device.
11 ATTORNEY WEED: Correct.
12 COUNCILMEMBER BATES: Okay. That's all I
13 needed.
14 ATTORNEY WEED: Yeah. That thing is a --
15 you know, I think that thing would qualify as a mast,
16 the structure, and then if it's, you know, 12 feet
17 above the roof line, then it would have to be
18 permitted.
19 COUNCILMEMBER BATES: It is not.
20 ATTORNEY WEED: Okay. Then, I think you'd
21 go to the Building Code and see if it's safe.
22 COUNCILMEMBER BATES: Okay. Thank you.
23 COUNCILMEMBER PITTMAN: In reference to the
24 ham radio operation, if I was a ham radio operator in
25 the city, in very simplified terms, what would we --

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1 according to this -- would we be expecting from them?
2 ATTORNEY WEED: Nothing.
3 COUNCILMEMBER PITTMAN: Just as is.
4 ATTORNEY WEED: As is.
5 COUNCILMEMBER PITTMAN: So we didn't really
6 change anything according to the federal guideline.
7 ATTORNEY WEED: Yeah.
8 COUNCILMEMBER PITTMAN: Okay. Just --
9 ATTORNEY WEED: Nothing.
10 COUNCILMEMBER PITTMAN: -- getting some
11 clarification on that.
12 COUNCILMEMBER FLEMING: But if I had a stick
13 antenna for my television set, in my back yard --
14 ATTORNEY WEED: Have to bring it down or we
15 have to talk about --
16 Or I've given you some alternative language.
17 That's 5-282, and you have to decide what you want to
18 do. I gave you some alternatives where, you know,
19 they could continue to leave it up unless it's unused
20 for a period of six months; if the stick collapses, if
21 it becomes damaged by rust, broken -- had broken
22 prongs, split poles or, you know, otherwise becomes
23 substantially damaged, then it would have to be
24 removed. So I've given you a grandfathering option if
25 you want to go that route.

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COUNCILMEMBER ROCHE: I'm not much on hardware. Stick antenna -- I mean nowadays all the T.V. signals are digital anyway.
ATTORNEY WEED: I don't know if anybody would be able to get T.V. --
COUNCILMEMBER ROCHE: Yeah.
ATTORNEY WEED: -- via stick antenna, but that's out of my realm of country. What I did was write something based upon the fact that the federal law gives you the ability to regulate that.
COUNCILMEMBER ROCHE: I understand.
COUNCILMEMBER BATES: Since this has been on what, multiple agendas --
ATTORNEY WEED: Yes, sir.
COUNCILMEMBER BATES: -- I will make a motion to adopt with a couple of changes.
MAYOR JENKINS: I've got a couple of sign-ups on this.
COUNCILMEMBER BATES: Oh, okay.
MAYOR JENKINS: That's the reason I ask.
COUNCILMEMBER BATES: Yeah. Sorry. Go right ahead.
MAYOR JENKINS: Susan Fraysse?
MS. FRAYSSE: I'm just glad you're considering it. Thank you.

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MAYOR JENKINS: Okay. Stuart Anderson?
MR. ANDERSON: Is there a conflict in the height situation? 200-foot antenna with --
MAYOR JENKINS: Come up to the microphone, sir.
MR. ANDERSON: Stuart Anderson.
Is there a conflict in the height limitation, 200-foot height? Is that like around 15 stories? We have ordinance about how tall our buildings are being built, et cetera. It seems like this is a conflict. I mean 200 feet is like a 15-story-or-more building. Does that not conflict with five stories and 10-story buildings in our zoning and building codes?
COUNCILMEMBER FLEMING: Mr. Weed, do you want to address that?
ATTORNEY WEED: Well, I'll try.
I don't know that it conflicts. What I can say is that the federal law clearly provides that if the structure is more than 200 feet above ground level at a site or located near a public-use airport, then they have to notify the FAA and register with the commission.
So essentially the federal government doesn't seem to care if it's below 200 feet. So the

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answer to your question is there a conflict between the federal rule of the maximum of 200 feet and any kind of local rule, what I would say is in the Building Code right now we don't have a local rule. That's what the Council is considering tonight.
With regard to other height limitations in the Zoning Ordinance -- and once again I would say, you know, the more specific ordinance would supersede the prior ordinance and where there isn't a direct conflict you try to harmonize the same.
MR. ANDERSON: So we could put a 10- or 15-story building on top of what I call the tank farm.
ATTORNEY WEED: If that's allowed in that zoning or if the zoning were changed to allow that.
MR. ANDERSON: I understand. I understand. Interesting. Thank you.
MAYOR JENKINS: Thank you.
Brian?
COUNCILMEMBER BATES: Thank you, Mr. Mayor.
I'll make a motion to adopt this ordinance with the following changes, all of them on page 8 of 10: addressing the typographical items to renumber those from 2-282, 2-283, 2-284 and 2-285 to 5-282, 5-283, 5-284 and 5-285; to change Section 5-282 to adopt the alternative that Mr. Weed has proposed in

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bold; and then under 5-283, to change that section to reserved both in the title and in the body.
MAYOR JENKINS: Do I get a second? Do I get a second on that?
COUNCILMEMBER ALEXANDER: Second.
COUNCILMEMBER PITTMAN: I'll second.
MAYOR JENKINS: Any more discussion?
COUNCILMEMBER FLEMING: Yes, sir. I have just one last clarification.
So the bold is what we're adopting in this particular ordinance; is that correct, Mr. Bates?
COUNCILMEMBER BATES: Yes, ma'am, that would be my motion.
COUNCILMEMBER FLEMING: So it's just the ones that are attached to structures are going to be acceptable.
COUNCILMEMBER BATES: As it reads, that's correct.
COUNCILMEMBER FLEMING: So if I've got a stick antenna in my back yard, it's prohibited.
COUNCILMEMBER BATES: And I'm open to amending that.
COUNCILMEMBER FLEMING: I'm not -- I'm just -- I don't like prohibiting things that are still being made is what I'm trying to get at. I don't know

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whether they're still being made, but, you know, I just don't like prohibiting. That's my only comment.

COUNCILMEMBER BATES: Sure. Could we amend that to be stick antennas on the property?

COUNCILMEMBER FLEMING: Unused for a period of six months. You know, the thing collapses or --

ATTORNEY WEED: Sure. Yes.

COUNCILMEMBER FLEMING: -- damaged by rust, broken prongs.

ATTORNEY WEED: Something like stick antenna that is located on any -- on any property in existence on the effective date of this regulation may remain, et cetera, et cetera. Sure.

COUNCILMEMBER FLEMING: With that friendly change, Mr. Bates, I would appreciate that.

COUNCILMEMBER BATES: Yeah. I'll accept that. Thank you.

MAYOR JENKINS: I have a motion and a second. Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

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CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Thank you.

Bob Roche?

COUNCILMEMBER ROCHE: Staffing for the GM property or -- sorry -- staffing for GM Development. Some people may be aware that we have this little property over here, 160-some bytes, whatever.

Anyway, my concern is that we had one problem, we had one situation, obviously, with the county wanting to build a stadium. And thanks to the citizens who came out and spoke out loud and clear, I believe the stadium's going to be off the table, but that doesn't necessarily mean that we're going to get anything like what we want here.

It's an extremely complicated situation. There's legal ramifications, there's financial rami-

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fications, there's potentially zoning ramifications; who owns it? If someone owns it, does it -- if the county takes an ownership, would that mean that we lose it from our tax base? what kind of services would be provided? what do we not want there? what do we want there? et cetera, et cetera. It's just a huge, huge issue.

And I've been concerned, frankly, that I think that we need someone -- or probably more like a consulting situation where someone could come in and give us ideas and give us guidance. I mean obviously I can't talk about what we've been talking about in the Executive Sessions. I guess I could legally say we are gathering information.

But beyond that, we recently had -- a couple weeks ago, we had a situation where, you know, something was sent out and it was a -- and without getting into the details of it, there was a lot of confusion. And I believe the reason -- one reason there was a lot of confusion is because we didn't have an overall strategy. We haven't gotten together and said, "Okay. This is what we're going to go. This is our best scenario. If this doesn't work, then what we'll do that," et cetera, et cetera, and map out a strategy so that we can make sure that whatever

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happens at the GM property is the best possible outcome for the citizens of Doraville and the surrounding communities from both the livability standpoint, from a financial standpoint, you know, et cetera, et cetera, and I haven't felt comfortable that we're doing that yet.

And I think that there are experts. I think that there are people out there that do this as a living. They do it all the time. And I think it makes a lot of sense to -- you know, yes, I'm saying this -- spend a little money on someone to come and help us do this, because what we're talking about is not going to be, you know, next week and it's going to be over with or whatever. What we're talking about is our legacy for probably the next 30 or 50 years.

I believe that we should probably allocate something like fifty/a hundred thousand, whatever, dollars. I think we need to put out some kind of an RFP to, you know, see if we couldn't bring in, you know, some form of consulting company or whatever to give us an idea of what it is we want to do and make sure that our best interests, the city's best interests for the citizens and the businesses are taken care of every step of the way.

I just don't feel like we have that now.

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1 We're in a reactive mode now, I believe. That's my
2 opinion and, you know, everyone's free to disagree.
3 But we're in a reactive mode. We're just kind of
4 sitting here waiting to see what's going to happen
5 next and then hope to heck that we have some kind of
6 adequate response, and I think we need to get beyond
7 that and I'm open to suggestions from the Council.
8 COUNCILMEMBER FLEMING: Well, my biggest
9 concern, though, that I think that we need
10 professional guidance is writing an RFP to identify
11 really what our needs are. I can't put on a piece of
12 paper right now and say, okay, well, I think we need a
13 financial advisor to do what, or I think we need a
14 development firm that deals in mediation or -- you
15 know. So I'm real concerned about the next process.
16 I believe that we need some top dogs in our
17 back pocket, and I think Mr. Weed's firm is helping
18 out in some areas in that, but I'm just concerned
19 about who's going to write the RFP as to what we
20 really want as far as personnel. So that's where I am
21 on that.
22 MAYOR JENKINS: I still feel it's a little
23 premature to spend any money. It will be a number of
24 years even if --
25 And General Motors has not done any talking.

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1 They've got no bites or anything. The only thing
2 we've heard is from some other people -- the County
3 and some other people. But I feel like it's premature
4 to spend any kind of money at this time.
5 I think when GM lets us know if they have
6 got some bites, that would be the time for us to even
7 think about this. Of course, as he said, that's my
8 opinion.
9 COUNCILMEMBER SPANGLER: Is there any way,
10 Mr. Roche, you could check with some of the other
11 cities that have had similar development --
12 COUNCILMEMBER ROCHE: I'd love to.
13 COUNCILMEMBER SPANGLER: -- to see what kind
14 of positions or what kind of firms that they hired to
15 help them through?
16 COUNCILMEMBER ROCHE: Absolutely.
17 In fact, I think, all due respect to
18 Councilwoman Fleming, her comments, you know, exactly
19 prove the point. We don't even know what we don't
20 even know at this point. We have no idea. You know,
21 we don't have any kind of -- we don't even know how we
22 would go about beginning to set up a strategy for this
23 situation.
24 COUNCILMEMBER ALEXANDER: Mr. Haeberlin, I
25 believe the young man that was the speaker at our town

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1 hall meeting, he indicated to you that he had some
2 additional materials regarding specifically the Ford
3 plant in Hapeville that he was going to forward to
4 you.
5 MR. HAEBERLIN: That's correct.
6 COUNCILMEMBER ALEXANDER: Have you received
7 that information from him?
8 MR. HAEBERLIN: I have.
9 COUNCILMEMBER ALEXANDER: Would you mind
10 making sure Council gets that information?
11 MR. HAEBERLIN: Will do.
12 COUNCILMEMBER ROCHE: So we can sit here and
13 do nothing or we can --
14 You know, I don't know if anyone signed up
15 for this, Mayor? I mean if the Council's not talking
16 about it, I mean I do have some comments.
17 MAYOR JENKINS: Stuart Anderson's the one
18 that signed up for it. Do you want to go ahead and
19 let him?
20 COUNCILMEMBER ROCHE: Certainly. I'm all
21 ears at this point.
22 MR. ANDERSON: Stuart Anderson.
23 I and Bonita Hoffmeister, at least, have
24 been asking for planned development to go on and to be
25 adopted, to be written, to be dealt with and thought

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1 with since at least 2006 and actually before that.
2 When GMA decided they were going to close this thing
3 seven years ago, we should have been working on our
4 zoning then. It would have answered all sorts of
5 questions that Mr. Roche has.
6 We paid $100,000 to the Pond Company for a
7 great deal of materials. At least part of that was a
8 20/30-page chapter on planned development. It's a
9 fairly sophisticated chapter that they cloned from
10 somebody. It needs editing, but it certainly
11 partially answers your question, your desire for
12 direction.
13 If we have zoning of that nature in place or
14 at least start it, that gives us a lot of insight into
15 what it is that we want. If you start to read through
16 that chapter that the Pond Company developed or other
17 chapters on planned development, they make it very
18 clear about quality of development, square footage,
19 the types of things that you put into those kinds of
20 zoning, and that's -- that's how we regulate, that's
21 how anybody regulates, any city regulates what goes
22 into their development area.
23 It's really straightforward. It's how I do
24 things. I do complex things. I break them down into
25 simple situations. You address that one area, that

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1 planned development zoning by itself and you find that
2 a lot of people have spent a lot of time developing
3 those kinds of zonings.
4 It's nothing we're going to develop or
5 invent on our own. You put something like that
6 together and you then go to perhaps a professional
7 outfit, the Roberts Company perhaps, and ask them to
8 review it and critique it, at not $100,000 cost but
9 maybe 10 or 20 thousand dollars cost to do that sort
10 of thing and tailor it to us is my suggestion. Thank
11 you.
12 It's been going on a long time. It's been
13 going on way too long that we should have done this.
14 MAYOR JENKINS: Thank you, Stuart. All
15 right.
16 COUNCILMEMBER ROCHE: Well, I mean I'll say
17 I agree with Stuart as far as getting that piece of
18 the puzzle together.
19 My concern, though, is that we have such --
20 I mean obviously what we have here is a political
21 situation. We could write the best zoning, the best
22 planning and everything, and if another government
23 entity comes in and has an ownership position, all
24 that we want to do could potentially fly out the
25 window. We may have no control whatsoever over it, so

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1 then what do we do?
2 And this is what I'm getting at. We have
3 these little pieces and bits of information that we
4 either have -- you know, we have the LCI, we have our
5 zoning, you know, we're getting information about
6 other things, too. We need all that information of
7 course, we need all these little tools, I guess, but
8 we don't have an overall strategy.
9 What I'd like to do is make a motion that we
10 postpone this to our very next meeting, and in the
11 meantime, I'll do some more research and come up with
12 something that may be a first draft RFP that maybe
13 better clarifies what I'm getting at. Apparently I'm
14 not doing a good job of communicating here because
15 obviously we're not getting anywhere.
16 I think if we sit here and we do nothing,
17 then we will deserve whatever we get because we're
18 going to get whatever they want to give us, and I'm
19 not going to just let that happen. I went tooth-and-
20 nail with the County already. You know, they're not
21 too happy with me. The good news is that since the
22 resolution, now they're not happy with all of us, so
23 at least that's good, you know.
24 But still, I'm here to look out for the --
25 we are here to look out for the best interests of the

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1 city of Doraville, and I don't want to get run over,
2 frankly. And I'm willing to go out and get every
3 resource we can to make sure that doesn't happen.
4 I'd like to make a motion that we postpone
5 this to old business on the next City Council meeting.
6 COUNCILMEMBER SPANGLER: Second.
7 MAYOR JENKINS: More discussion?
8 - - -
9 (No response)
10 - - -
11 MAYOR JENKINS: Call the roll.
12 CLERK BLACKMON: Councilmember Alexander?
13 COUNCILMEMBER ALEXANDER: Yes.
14 CLERK BLACKMON: Councilmember Bates?
15 COUNCILMEMBER BATES: Yes.
16 CLERK BLACKMON: Councilmember Fleming?
17 COUNCILMEMBER FLEMING: Yes.
18 CLERK BLACKMON: Councilmember Pittman?
19 COUNCILMEMBER PITTMAN: Yes.
20 CLERK BLACKMON: Councilmember Roche?
21 COUNCILMEMBER ROCHE: Yes.
22 CLERK BLACKMON: Councilmember Spangler?
23 COUNCILMEMBER SPANGLER: Yes.
24 COUNCILMEMBER ROCHE: Thank you.
25 MAYOR JENKINS: Okay. The next item, Luke

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1 was a little under the weather. He's going to put
2 this on the next agenda, Rhonda.
3 CLERK BLACKMON: Yes, sir.
4 MAYOR JENKINS: Okay. The next thing on the
5 agenda is Ms. Koontz.
6 MS. KOONTZ: Good evening. I'm Stephe
7 Koontz, and tonight I am here to address the problems
8 I see with the current Doraville policy on Open
9 Records requests and the use of attorney-client
10 privilege to block them. I'm going to assume each of
11 you got the paperwork I sent you on this issue showing
12 some basic Georgia Supreme Court case law on the
13 subject.
14 It appears the City has adopted a policy
15 that City staff and Councilmembers can carbon copy the
16 City Attorney to any communications and doing so will
17 seal these communications from ever being seen by the
18 public. Many of these have nothing to do with the
19 attorney, nor would a copy normally be sent to him
20 other than using this mechanism to block any future
21 Open Records requests on these communications.
22 I'm not one to make multitudes of Open
23 Records requests, but the two I've made earlier this
24 year have been denied based on this policy. This
25 prompted me to do some research, and I found that how

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1 attorney-client privilege applies to government and
2 their attorney is not the same as it applies to a
3 citizen and their attorney. The citizen isn't
4 required to adhere to Open Government regulations.
5 Furthermore, the term "potential litigation"
6 in regards to government has been given a very limited
7 scope by the Georgia Supreme Court in the multiple
8 cases that have been brought and tested there over the
9 years. Unless there is a pending case, this can't be
10 applied. Simply saying "Someone might sue us" can
11 apply to anything, and the Supreme Court has
12 purposefully ruled against the use of such a broad
13 brush, as doing so would undermine the whole concept
14 of open records and open government. They went as far
15 to say even if somebody says in a public forum, "I am
16 going to sue you," that doesn't meet the standard for
17 this to be applied.
18 In stark contrast to what the Georgia
19 Supreme Court has ruled in the past, the City of
20 Doraville on the advice of Mr. Weed has adopted this
21 policy of using attorney-client privilege outside the
22 State's defined use of the term "potential
23 litigation."
24 I understand also that some of Mr. Weed's
25 colleagues disagree with him on the same point. The

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1 attorney I discussed this with said he saw this as
2 being an indefensible position when the City is sued
3 over this. The State has clearly stated multiple
4 times it is going to rule in the favor of more open
5 government, not less open, and when this goes to
6 trial, the taxpayers will end up funding the City's
7 position on this broken policy and they will lose.
8 My point in bringing this to the Council is
9 the attorney doesn't make the laws here. The people
10 sitting on this bench do. You need to research and
11 try to understand all the repercussions before you
12 vote on any policy and the rules for implementing
13 them. You can't vote based on one person's opinion.
14 This policy is broken and undermines the
15 whole concept of open government by allowing virtual
16 e-mail meetings to occur with all records of these
17 conversations being sealed from the public.
18 This brings up the real question: Whom is
19 this policy protecting? The 10,000 citizens of the
20 city or the dozen City staff and Councilmembers this
21 is being applied to?
22 If there was actual potential litigation
23 threatening the city, I would understand sealing
24 records of attorney-client-privileged communications
25 related to that case until the case was over. But to

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1 seal all documents that the attorney breathes on flies
2 in the face of the concept of open government and
3 should be ended. If nothing else, the Council should
4 vote to contract a GMA attorney or some other attorney
5 to get a second legal opinion on this important
6 policy. That would be much cheaper than a lawsuit
7 this broken policy is going to bring about.
8 I implore the Council to come to some sort
9 of decision on this policy so we continue to be a City
10 of Ethics and show the citizens here you do truly
11 believe in open and transparent government.
12 Thank you for your time in allowing me to
13 speak on this.
14 MAYOR JENKINS: Thank you.
15 COUNCILMEMBER ROCHE: This is an agenda
16 item, so do we take this up? I mean I --
17 MAYOR JENKINS: Yeah.
18 COUNCILMEMBER ROCHE: Frankly -- well, you
19 know what? I can't give you my opinion on this
20 because I've given my opinion on this in e-mails and
21 it was copied to the City Attorney, so technically
22 that would be violating client-attorney privilege
23 under the current policy that we have.
24 ATTORNEY WEED: Well, frankly, Mr. Roche,
25 let's talk about that. Mr. Koontz has made an

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1 assumption --
2 COUNCILMEMBER ROCHE: Ms. Koontz, please.
3 ATTORNEY WEED: Pardon me. Ms. Koontz has
4 made an assumption saying that she knows what my
5 advice is. I certainly don't know how Ms. Koontz, who
6 I've never advised as a client, would know what my
7 advice is, so I'm curious about how those
8 communications might be transferred to Ms. Koontz in
9 compliance with the law.
10 But with regard to your understanding of a
11 policy or lack thereof, I will say this for maybe the
12 fifth to eighth time that I have put this in writing
13 and I've told you orally: These are not my secrets.
14 I do not care what you do with your secrets or with
15 your communications.
16 I'll tell you a story very briefly. When I
17 was the county attorney of Lowndes County, the E911
18 director was a gentleman by the name of Nick Lacy who
19 was a fighter pilot in Vietnam. He was from the
20 midwest. He got his hometown paper sent to him. By
21 the time it got to him in Vietnam, it was about a week
22 late. In the newspaper that he got from his small
23 town in Iowa, there was always an article about how
24 the war was being prosecuted, so the Viet Cong knew
25 every flight pattern they were ever going to fly

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1 before the actual pilots knew it. It had been
2 advertised in the paper a week before. So there are
3 times when private communications between a lawyer and
4 his client are appropriate and there are certainly
5 times when they are not.
6 If you indicate to the public every single
7 opinion I have rendered to you since my appointment,
8 that is fine with me. Please do so. It requires a
9 vote of four of you to do so, and you can do that
10 tonight.
11 I stand by every single opinion that I have
12 written. The practice of law is an art. It's not a
13 science. If someone has a different opinion, as long
14 as it's based upon their education and experience, so
15 be it. It's as simple as that.
16 But my job is to hold whatever secrets you
17 give to me. I can't reveal them. If you wish to
18 reveal them, do so and do so now.
19 COUNCILMEMBER ROCHE: And I do have to agree
20 with Mr. Weed on that: that ultimately we up here
21 make the policy.
22 I'm not really sure exactly where this
23 policy came from, frankly.
24 ATTORNEY WEED: To my knowledge, there is no
25 policy, Councilman.

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1 COUNCILMEMBER ROCHE: But it's been kind of
2 the operating -- the way we've been doing it. So if
3 we don't --
4 ATTORNEY WEED: That's your --
5 COUNCILMEMBER ROCHE: -- have a policy --
6 ATTORNEY WEED: -- position, Councilman, not
7 the City Attorney's position.
8 COUNCILMEMBER ROCHE: Well, there have been
9 several times when, you know, there's been e-mail
10 threads going on and Councilpeople have said, "Oh, no.
11 This needs to be under client-attorney privilege,"
12 et cetera, et cetera, and that's kind of the way we've
13 been -- whether it's formal or informal, it seems like
14 that's the way we've been operating.
15 ATTORNEY WEED: I have to disagree with that
16 completely, Councilman.
17 With regard to advice that I have rendered,
18 I have never once -- not once -- issued a blanket
19 statement that all communications with me were
20 privilege. That is not correct.
21 COUNCILMEMBER ROCHE: I understand that.
22 I'm not --
23 ATTORNEY WEED: And you agree with --
24 COUNCILMEMBER ROCHE: -- saying you have.
25 ATTORNEY WEED: Thank you. And you agree

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1 with me.
2 COUNCILMEMBER ROCHE: What I'm saying,
3 though, is it seems to be the policy of this Council
4 and the staff that, you know, the staff can make
5 comments or whatever but staff is protected also
6 because you can't really present those anywhere
7 because the City Attorney has been copied --
8 ATTORNEY WEED: And once again --
9 COUNCILMEMBER ROCHE: -- and that's --
10 ATTORNEY WEED: -- that's your position,
11 Councilman, not -- not -- That's never been my
12 opinion. I want to clarify that for the record.
13 COUNCILMEMBER ROCHE: Then, it sounds like
14 the problem we have is the lack of a policy on this,
15 and I think it would behoove the Council to sit down
16 and decide what the policy's going to be.
17 There are situations where confidentiality
18 is appropriate. You know, frankly, I mean I'm very
19 much for open government. I personally wish all the
20 personnel stuff was completely secret but it's not but
21 -- you know, because you have to respect people's --
22 in my opinion, respect people's privacy.
23 But on the other hand, I think that just
24 simply I'm going to send somebody something -- or send
25 something to somebody and it's going to be blocked

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1 just because I happen to have a C.C. to the City
2 Attorney, I just don't think that's right.
3 You know, personally, I have nothing to --
4 you know, you can look at all of my e-mails. I don't
5 care, and I've said that before.
6 Anyway, I knew that Ms. Koontz was
7 researching this, I knew she was going to bring it up.
8 And since it was an agenda item, typically when agenda
9 items start, you know, after it's presented there's
10 some sort of discussion. Does the Council want to do
11 anything about this? Does the Council not want to do
12 anything about this?
13 COUNCILMEMBER FLEMING: Well, if we pass a
14 policy and we say anything that we e-mail Mr. Weed is
15 subject to Open Records, then what happens on the day
16 when something really should have been confidential?
17 COUNCILMEMBER ROCHE: Well, I'm not saying
18 that that would be a valid policy, frankly. There are
19 times, like I said, that we do need to maintain
20 client-attorney privilege. Just not for everything
21 all the time. That's all I'm saying.
22 ATTORNEY WEED: As a suggestion to you, I
23 think there are a number of solutions.
24 A, you can not include me in any of your
25 communications. That's a perfectly legitimate

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1 solution.
2 If you want to have discussions amongst
3 yourselves by telephone or e-mail, that's fine.
4 If you want to call me and seek my opinion
5 on the telephone, I'll be happy to give my opinion.
6 So that's a solution.
7 Once again, these are issues for the Council
8 to decide what you want to do.
9 COUNCILMEMBER ROCHE: Exactly.
10 ATTORNEY WEED: But clearly the law is very
11 plain with regard to can you and should you rewrite
12 the Open Records Act, the Open Meetings law and any
13 attorney-client privilege. Pardon me. The attorney
14 work-product privilege.
15 The only privilege the lawyer holds, there's
16 only one, and that's it, and that's his work product.
17 If I give you -- if I prepare some work product which
18 is my notes, the notes I'm writing right here, you
19 can't get those. Those are my notes; it's my work
20 product. And that's the only privilege I hold.
21 But any kind of communications, opinions I
22 give you, give them to the world. That's fine with
23 me. That doesn't protect me nor harm me as your
24 counsel. Do I think that's good advice? No attorney
25 is ever going to tell you that everything your --

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1 every ounce of advice you get from your attorney,
2 everybody on the planet should know. And any attorney
3 who tells you that is a fool.
4 COUNCILMEMBER ROCHE: And I don't think --
5 you know, I don't even think -- I'm not even sure that
6 Ms. Koontz was saying that, and I'm not certainly
7 saying that.
8 I'm just saying that right now the default
9 position is if Murray Weed appears anywhere and
10 someone does an Open Records request, these records do
11 not exist.
12 ATTORNEY WEED: Once again, Councilman, that
13 is your position singly. I have never opined that,
14 not in writing nor orally. I challenge anyone to find
15 out where I have.
16 COUNCILMEMBER ROCHE: Well, maybe what we
17 need to do then is to find out these Open Records
18 requests -- you know, the responses to those and then
19 get to the bottom of it, find out what it is that
20 we're blocking from Open Records based on that
21 criteria.
22 ATTORNEY WEED: There is a --
23 COUNCILMEMBER ROCHE: That might be a --
24 ATTORNEY WEED: There is a --
25 COUNCILMEMBER ROCHE: -- good place to

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1 start.
2 ATTORNEY WEED: -- particular procedure if
3 someone feels aggrieved of the situation, Title 50
4 provides for a procedure to resolve it. That's in the
5 ordinance.
6 COUNCILMEMBER ROCHE: Which is?
7 ATTORNEY WEED: Pardon me. It's in the
8 state law itself.
9 COUNCILMEMBER ROCHE: Which is? What's the
10 procedure? Litigation?
11 ATTORNEY WEED: Yes.
12 COUNCILMEMBER ROCHE: I prefer not to get
13 into litigation if we don't have to.
14 ATTORNEY WEED: Well, I'm confident in this
15 litigation we would win, at least based upon my
16 opinions that have been issued.
17 What other staff members have done or not
18 done, I can't speak to.
19 COUNCILMEMBER ROCHE: So do we anything? Is
20 the Council going to move forward on this or are we
21 just going to --
22 COUNCILMEMBER SPANGLER: What are you
23 actually asking for?
24 COUNCILMEMBER ROCHE: I think what we need
25 to do is to begin to formulate some sort of an e-mail

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1 policy that talks about -- or Open Records policies,
2 and we need to probably do some research -- I believe
3 that Ms. Koontz has some research already, and I think
4 Ms. Koontz mentioned that she'd already done a couple
5 of Open Requests which were denied. I think that
6 would be a good start -- and put together a policy.
7 COUNCILMEMBER PITTMAN: So if someone wanted
8 an Open Records request and it was denied based on
9 that, are you saying that four Councilmembers could
10 override that and they could get that?
11 ATTORNEY WEED: If an Open Records request
12 were filed and the only objection/exemption to the
13 Open Records request was it was based upon the
14 attorney-client privilege, absolutely.
15 COUNCILMEMBER PITTMAN: So --
16 ATTORNEY WEED: You can vote on it tonight.
17 Or you can elect to give every single memo I
18 have ever written to you, to the public, and I invite
19 you to do so if that's what you think you should do.
20 I don't -- I will never advise you to do that because
21 I think that's a terrible mistake, but you have that
22 right.
23 COUNCILMEMBER PITTMAN: But wouldn't that be
24 simplified, then, if that would be the case, if
25 someone could request that from us? Wouldn't that

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1 just be simpler to say, ask if they could get that
2 information and four Councilmembers agreed to that or
3 disagreed? Wouldn't that just be the simple solution
4 versus --
5 ATTORNEY WEED: On each individual?
6 COUNCILMEMBER PITTMAN: -- going back and --
7 Yes; because we can't have it both ways,
8 obviously.
9 ATTORNEY WEED: Well, I mean there's no
10 procedure for that underneath the state law. It
11 simply provides you a list of what the state law says
12 is exempt and what is not exempt.
13 COUNCILMEMBER FLEMING: Yeah, but then we --
14 I'm sorry, I'm going to interrupt.
15 Because then we'd be in a situation of the
16 resident or business owner thinking that we were being
17 selective, that we couldn't get four Councilmembers to
18 approve the information being released to that person.
19 I don't want to be put in that position.
20 COUNCILMEMBER ROCHE: Well, but the
21 situation we have now is that the Council never even
22 knows about the denial of Open Records requests based
23 on this criteria.
24 And maybe that's the beginnings of the
25 policy is that if a citizen submits an Open Records

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1 request and they get a denial, based on some situation
2 or some set of criteria that we can put in a policy,
3 that they would have the option to say, "No. I think
4 that this needs to go to the Council," and the Council
5 could decide one way or another if it's appropriate to
6 grant that information or if it isn't, and at least
7 there's some kind of higher power above, you know,
8 frankly, the City Clerk and that interpretation of the
9 law at that moment in time. This is what I'm getting
10 at as far as putting together some kind of a policy or
11 procedure.
12 No, no one -- At least I'm certainly not
13 saying we just throw open everything, you know. I say
14 I have nothing to hide, but, still, obviously there's
15 things that need to be confidential because it's
16 appropriate that they're confidential.
17 But we need to have some kind of an appeal
18 policy so that if someone requests information from
19 the city government of Doraville and they get a flat
20 no, that they can say, "Well, you know, I don't agree
21 with you, so let's bring it up to the Council,"
22 because as you correctly point out, we have the right
23 if we want to to override that and make that public.
24 ATTORNEY WEED: Well, what I would say is
25 this: Please bear in mind that there is a very clear

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1 procedure written in the code which would, if a person
2 feels aggrieved of a response that they get from a
3 government under the Open Records Act, they could
4 pursue it with the attorney general's office and they
5 could seek what's called an in-camera inspection by a
6 superior court judge, and the judge would decide what
7 is actually privileged or not privileged.
8 And then there's -- essentially what I'm
9 trying to get at, I think there's a -- the Council
10 could have a policy, quote/unquote, that says that
11 you're going to make an individual decision on every
12 single Open Records Act request that comes through
13 that is denied on the basis of the attorney-client
14 privilege. There is no procedure for that in state
15 law. It's not contemplated.
16 And in fact, I think one could argue that
17 it's preempted because the procedure that is set out
18 in state law is a superior court judgment on it or you
19 pursue with the attorney general's office. And if the
20 document should have been provided and it wasn't
21 properly provided, that's a criminal offense and the
22 clerk can, you know, be punished for that criminal.
23 And that's the law.
24 So I think basically under the preemption
25 doctrine, you're going to have a hard time having an

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1 individual policy based upon each individual Open
2 Records Act request that comes through that would
3 accomplish your goal.
4 Can you waive the privilege every single
5 time you choose to on an individual request?
6 Arguably, you can, and so I think you could do that.
7 But I think Councilman Fleming is absolutely
8 right. You probably -- you have to get together,
9 you'll have to have a meeting. You're going to have
10 to decide. You'll have to look at the request, you'll
11 look at the response to the request and then you would
12 decide to waive the privilege or not. But sooner or
13 later, you will encounter a situation where you decide
14 you don't want to waive the privilege and then you're
15 going to have to deal with, well, we didn't waive it
16 here but we waived it there.
17 COUNCILMEMBER BATES: Under that scenario,
18 though, wouldn't you have to read all the
19 correspondences as well to verify that each one should
20 or shouldn't be granted review?
21 ATTORNEY WEED: You'd have to certainly read
22 the request. You'd probably want to examine every
23 document that might be relevant to it and then you'd
24 want to look at whatever the response was to that
25 request, and then essentially you would -- you know,

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you would apply your judgment to it and decide if you wanted to waive the privilege or not.

COUNCILMEMBER FLEMING: Well, since the comments were made that stuff was denied or -- take her out of the equation -- that it was denied because of attorney-client privilege, then I would think that you should be the one that reviews the information they requested to determine whether it was just an e-mail that you were copied on, to determine whether that's something that --

I mean you're giving permission because you're the attorney.

COUNCILMEMBER ROCHE: Or a legal opinion.

COUNCILMEMBER FLEMING: Yeah. You're giving the legal opinion.

ATTORNEY WEED: I don't know about Ms. Koontz's requests specifically. I don't have a conscious recollection of them and I don't...

Here's how an Open Records Act request comes in. The official custodian of the records is not the City Attorney; it is the Clerk. The Clerk, if she decides that she wishes my opinion or my commentary on it, will contact me.

But what she usually does -- and she can pipe in here -- is she'll get the request, and because

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she's not an expert on every individual or the records that they have -- the Police Department keeps records, Mr. Haeberlin's office keeps records, et cetera -- she will contact the individual department head or staff member and find out what records do you have that might be relevant to this request.

And then if it's not obvious on the face of the statute, then she might contact me and get an official opinion on it, which I have always given. I've never denied her an opinion nor will I ever.

And then at that point, a response would be crafted coming from her office, very oftentimes by the Clerk without my intervention or sometimes even knowledge about it. But I think I trust her judgment that when it's important enough, she'll contact me.

And that's how the process works, and that's what's required by the law.

I mean you never have to run a single Open Records request by my office. That isn't required.

COUNCILMEMBER ROCHE: And how about --

ATTORNEY WEED: And I'll be happy never to opine on another Open Records request again if you prefer.

COUNCILMEMBER ROCHE: No one's saying that. How about this?

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ATTORNEY WEED: I'll be glad to do that.

COUNCILMEMBER ROCHE: How about this? How about if we make a motion that any time an Open Records request is denied, a copy of the paperwork and the denial is provided to all members of the Council.

That would be a start. At least we would know about these things when they happen. If it's not an issue, then it's not an issue. If it becomes an increasing issue and a troublesome issue, then we can take some action on it.

So all we're talking about is a copy of the original Open Records request and whatever -- the memo, whatever it is you provide that says these documents were not provided due to client-attorney privilege, et cetera, et cetera, and I'm fine with an electronic copy.

MAYOR JENKINS: Is that a problem, Rhonda?

COUNCILMEMBER ROCHE: And I'd like to make that in the form of a motion that any time --

CLERK BLACKMON: No, that's not a problem.

COUNCILMEMBER ROCHE: I'd like to make a motion that any time an Open Records request is denied, that the City Council -- members of the Council receive a copy of the original Open Records request and whatever paperwork or denial -- you know,

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talks about what's denied and why it's denied.

MAYOR JENKINS: Second?

COUNCILMEMBER SPANGLER: Second.

And I would like to ask Mr. Weed --

MAYOR JENKINS: I got one person to speak on this --

COUNCILMEMBER ROCHE: I'm sorry.

MAYOR JENKINS: -- before we -- that's all right -- before we make a motion.

COUNCILMEMBER SPANGLER: I just wanted to ask Mr. Weed.

What all items do you consider unprivileged under attorney-client privilege that we couldn't discuss with a resident or anybody else?

ATTORNEY WEED: Any document -- If you asked me -- If any individual amongst you in your official capacity as a Councilmember or any staff member asked me for my legal professional opinion on a topic or you CC'ed me in on your communications amongst each other and one of you asked me for an opinion, then, in my opinion, that meets the standards for the attorney-client privilege because I'm rendering legal advice to you.

Now, once again, you hold the privilege. You can give that advice to whoever you want to. I

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have nothing to say about that. Nothing I could do to prevent you. Technically, it would take four of you to do that because no individual is in charge of the Council. You are a collective body. You are the living embodiment of the city and therefore -- and literally, any four of you at any given time are the living embodiment of the city, but no individual.

So it's interesting. Any of you, I think, can generate the cause for the privilege to be in play but no individual of you can necessarily waive it legally.

MAYOR JENKINS: Stuart?

MR. ANDERSON: I'll pass. Thank you.

MAYOR JENKINS: Okay.

ATTORNEY WEED: But you could always not ask me my opinion.

COUNCILMEMBER ROCHE: Okay. I understand.

MAYOR JENKINS: Any more discussion?

COUNCILMEMBER FLEMING: Carol Gillman had her hand up.

MAYOR JENKINS: Call the roll, please.

CLERK BLACKMON: Somebody else had their hand up.

COUNCILMEMBER FLEMING: Carol Gillman.

MAYOR JENKINS: Do what?

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CLERK BLACKMON: Councilmember Fleming said someone else had their hand up.

COUNCILMEMBER FLEMING: Carol.

MS. GILLMAN: Just one question. What would be the purpose of the referral?

MAYOR JENKINS: Come on up here, ma'am, so she can hear you.

MS. GILLMAN: Mr. Mayor and Council, Carol Gillman, Chestnut Place.

What would be the purpose of the referral? Is your motion to, if there's a denial, that it's an informational referral and you just know about it or is it a referral so that you must or may take action?

COUNCILMEMBER ROCHE: It's just for informational. The problem that we run into is that there may be issues going on in the city that the City Council never finds out about. And it may be no problem at all. It may be that every single denial is absolutely -- you know, everyone up here would say exactly that.

This would give us an opportunity to know that if we start -- for instance, worst case would be that if we start seeing a whole lot of denials and then we go back and we look at the e-mail and we say, "That doesn't make sense. Why was this denied?" or

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whatever, then if necessary, if it's appropriate later on, the Council would potentially make some type of -- take some action.

But until we know what's going on and what's not going on, for that matter, you know, we don't try to fix problems that we don't know exist. This is just making us aware that if a problem exists, we can do something.

MS. GILLMAN: Well, I think the statement is very relevant that was made, and I think open government is extremely important.

COUNCILMEMBER ROCHE: Absolutely.

MS. GILLMAN: As I listen to the discussion, though, I'm concerned that policy and the oversight responsibility may be meshed with day-to-day operational responsibility, and I believe we can get into somebody's business too much. I'm not saying that we do; I'm not saying that would happen. But I'm saying we hire professionals to do a job, and whether it be the City Clerk or an accountant or an auditor, that we allow them to do their job and --

COUNCILMEMBER ROCHE: And as long as they're doing their job, we'll get the notifications, and everybody will say, oops. There's another one of those notifications. No big deal. But that way, we

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all have a comfort level and the citizens have a comfort level too.

MS. GILLMAN: Well, we certainly want to have that comfort level. Thank you.

MAYOR JENKINS: Thank you.

Stephe, did you want one more minute?

MS. KOONTZ: Something I'm confused about was you said there's no policy on this attorney-client privilege stuff, but then when I make an Open Records request, it was denied for attorney-client privilege. So obviously there's some kind of a policy that created the denial or I would have been given my request. And the request I made was for communication between two people that weren't the attorney, but I was told that this communication between these two people had been carbon copied to the attorney without his response to any of it but that was enough to make it sealed, that he was carbon copied to the e-mail.

And if you make it take months to get these records -- Like the thing I had was time-sensitive. It was about an issue that was going on in the City Council. And if it had taken two months to get it, you-all would have already voted on the issue and it would have been a moot point, and that's --

So obviously there's some kind of a policy

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that somebody's using to determine whether to fill the requests or not.

COUNCILMEMBER ROCHE: Well --

ATTORNEY WEED: There's no policy from the office of the City Attorney. Each individual case I look at only when I'm called upon to look at them; otherwise, they could have occurred a thousand times without me even knowing about it.

If I'm asked to opine, I opine, and then what I opine on is Title 50 of the code and the relevant cases, you know, to that but each individual fact situation has to be considered individually.

What I will say and what I've maintained the entire time is you never go wrong giving up the documents. And I tell my clients that often, and everybody who works with me will certainly say that I say that. That's always the default setting. And then number two is, you know, of the limited privileges, of the limited items that are confidential, I will opine as to whether I think the facts warrant that they're confidential or not. I do it every time and I do it individually.

But as far as I know, there's no policy that I've crafted and there's certainly been no policy the Council's voted on that I've been told of at least in

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a meeting where I attended.

COUNCILMEMBER ROCHE: That's true.

COUNCILMEMBER FLEMING: Mr. Mayor, may I address Ms. Gillman's comment if you don't mind?

MAYOR JENKINS: Yes, go ahead.

COUNCILMEMBER FLEMING: Thank you for your comments, but I want to give you another example.

I have full confidence in Mr. Haeberlin's position as our City Planner. We've needed a city planner for more years than we all can imagine.

But because we've got all of these new -- I'm using this as an example if you don't mind. Because we have all of these new ordinances and you've got basically a new council here, we're still in a learning -- we're on the learning curve here. Okay?

So the ordinances are in place, and Mr. Haeberlin -- this is hypothetical -- denies specific businesses coming into a particular area that they want to go into. I would like to see the ones that the businesses coming into that specific area that he's denied -- though we haven't discussed this, but I'm just making this as a point. I would like to know those that he's denied in case we as a council need to address, well, maybe that item or that type of business could be applicable to that zone.

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Do you see where I'm coming from? Because if we got a lot of those types of applications that were denied, we, one, may be losing business to Chamblee or Norcross, okay, type thing. So I'm just using that as an example. I have full confidence in him.

And I think that was what Mr. Roche was commenting on. We want to be able to help you guys and help the city and not -- And I know that the micromanaging -- I don't want to micromanage either; however, I would like to be more educated as to what the city is doing.

MS. GILLMAN: Well, I think you do have a transference of knowledge when you have that communication,and I can appreciate that.

I also agree with you on wanting to avoid micromanaging, so you make a very good point. Thank you.

COUNCILMEMBER ROCHE: Yeah. Open government needs to be a two-way street.

MS. GILLMAN: Sure.

COUNCILMEMBER ROCHE: You know, I mean I give my number out all the time. I exhort people all the time, you know, call me up and ask me. I may not give you the answer you want but I'll give you the

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truth as far as I know it.

MAYOR JENKINS: Bob, legally I've got to get a motion to extend this meeting or close it.

COUNCILMEMBER ROCHE: I'd like to make a motion to extend this meeting to finish out this --

CLERK BLACKMON: We haven't voted on the last motion.

MAYOR JENKINS: Excuse me?

COUNCILMEMBER ROCHE: Oh, that's right, we haven't.

CLERK BLACKMON: We haven't --

MAYOR JENKINS: Yeah, I know that but I'm --

CLERK BLACKMON: -- voted on the last motion and the second.

COUNCILMEMBER SPANGLER: Can we go ahead and vote on --

MAYOR JENKINS: Go ahead and --

COUNCILMEMBER SPANGLER: -- this motion and then make the motion?

MAYOR JENKINS: -- call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

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1 COUNCILMEMBER FLEMING: Yes.
2 CLERK BLACKMON: Councilmember Pittman?
3 COUNCILMEMBER PITTMAN: Yes.
4 CLERK BLACKMON: Councilmember Roche?
5 COUNCILMEMBER ROCHE: Yes.
6 CLERK BLACKMON: Councilmember Spangler?
7 COUNCILMEMBER SPANGLER: Yes.
8 And I would like to make that motion,
9 Mr. Roche.
10 MAYOR JENKINS: Well, wait just a minute.
11 I want it long enough to open the bids for
12 the cleaning service and approve the minutes.
13 COUNCILMEMBER SPANGLER: Well, Mayor, I
14 would like to add the Police Department comments --
15 MAYOR JENKINS: Yeah, that --
16 COUNCILMEMBER SPANGLER: -- and also to
17 allow --
18 MAYOR JENKINS: Ms. Bird? Yes.
19 COUNCILMEMBER SPANGLER: -- finish the --
20 MAYOR JENKINS: Okay. How long? 30/45
21 minutes?
22 COUNCILMEMBER SPANGLER: No, sir. I think
23 that --
24 How many bids have you got for the cleaning
25 service?

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1 MAYOR JENKINS: A number of them.
2 ATTORNEY WEED: And members of the Council,
3 you may seriously want to consider adopting the
4 massage parlor ordinance. I think that would be
5 Mr. Haeberlin's recommendation, but I'll let him speak
6 for himself.
7 COUNCILMEMBER SPANGLER: Well, I would like
8 to ask to include that also.
9 Let's extend the meeting by 30 minutes. We
10 should be able to do it in 30 minutes.
11 COUNCILMEMBER ROCHE: I'll second that.
12 MAYOR JENKINS: Okay. Call the roll,
13 please.
14 CLERK BLACKMON: Councilmember Alexander?
15 COUNCILMEMBER ALEXANDER: Yes.
16 CLERK BLACKMON: Councilmember Bates?
17 COUNCILMEMBER BATES: Yes.
18 CLERK BLACKMON: Councilmember Fleming?
19 COUNCILMEMBER FLEMING: Yes.
20 CLERK BLACKMON: Councilmember Pittman?
21 COUNCILMEMBER PITTMAN: Yes.
22 CLERK BLACKMON: Councilmember Roche?
23 COUNCILMEMBER ROCHE: Yes.
24 CLERK BLACKMON: Councilmember Spangler?
25 COUNCILMEMBER SPANGLER: Yes.

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1 MAYOR JENKINS: Okay. Let's go ahead and
2 get Ms. Bird.
3 MS. BIRD: (Presenting documents to
4 Council).
5 Kay Bird. Can everybody hear me okay?
6 MAYOR JENKINS: Pick up the mic.
7 MS. BIRD: Okay. Is that better?
8 COUNCILMEMBER FLEMING: Yes. Thank you.
9 MS. BIRD: What I handed out is available
10 for anybody who wants to pick it up back here. It was
11 my presentation that I was going to do at the last
12 City Council meeting. I'm not going to read it. I
13 may read it at another time.
14 MAYOR JENKINS: Could you turn that on?
15 COUNCILMEMBER BATES: It is, sir.
16 MS. BIRD: Yes. Do you need me to speak
17 louder?
18 What Stephe spoke to tonight is a symptom
19 that I think is also reflected in the vote to restrict
20 Mr. Anderson from speaking two meetings ago. I had
21 hoped that with a newer slate on the City Council that
22 the problems that we had in the past of things
23 happening in this city with either it not going
24 through the appropriate channels of the City Council
25 and the citizens unable to find out what was happening

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1 and why, that that would change. I voted for a
2 majority of the people who are here, recognizing we
3 needed a change.
4 In the past, there's been a lot of things
5 that have happened that have really put a lot of
6 doubts in the citizens' minds as to what is going on.
7 We have had businesses crop up that haven't gone
8 through City Council approval. We've had businesses
9 crop up that have gone halfway through the process and
10 then didn't show up but they were billed anyway.
11 When I was taking a petition around to the
12 neighbors asking if we did get a Kroger or a Publix in
13 the city of Doraville, would they shop there? because
14 I was told, well, we can't get something like that
15 because not enough people shop.
16 The interesting thing I ran into -- and I
17 never turned that petition in to the City Council --
18 was because a number of people told me they were
19 afraid to sign it because they were afraid that Code
20 Enforcement would come and have something to say to
21 them about their lawn or whatever else they were
22 worried about.
23 There was obviously an air in this city, a
24 cloud hanging over it, that the citizens did not feel
25 safe and that the citizens were not in charge in this

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1 city.
2 Now, I view the City Council much like I
3 view a broker, a financial broker, that I hire a
4 broker to represent me to invest my money with the
5 goal of getting a good return. The taxpayers do the
6 same. We hand our money to you. You are our brokers.
7 If I go to my broker, I want to find out how
8 my money is being invested, why, what's being done
9 with it that's going to give me a good return. Now,
10 most of the time I judge that, and I think most people
11 do, by the bottom line. They don't try to micro-
12 manage. They don't have the professional experience
13 to do that. And that's basically what I'm finding
14 most citizens in this city want to do.
15 And I can understand why they don't want to
16 come to City Council meetings. They're pretty boring.
17 Actually, I think that all of you are up here doing an
18 amazing job in many ways because you deal with very
19 boring things -- lots of numbers, lots of confusion,
20 lots of laws -- and I imagine if I could ask you, what
21 is one thing you would like the citizens to know? it
22 is a difficult, complicated and confusing job and it's
23 low pay.
24 But you did volunteer for it, and you in
25 volunteering have to step up to a higher level and

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1 make sure that the citizens know what's going on. And
2 there's a reason that freedom of speech is the first
3 amendment to the constitution. We hold that in this
4 country more valuable than anything else. And when
5 people are restricted from speaking before their
6 government, they become angry. If they are afraid to
7 speak before their government because something will
8 happen to them, that is wrong.
9 There need to be some changes. We need open
10 government. We don't expect perfect decisions but we
11 do expect to participate and we expect to have
12 representatives speak for us if we need to, and we
13 need to be able to speak without fear.
14 So I'm looking at this as an overall issue.
15 Thank you for your time.
16 - - -
17 (Applause)
18 - - -
19 MAYOR JENKINS: Okay. Moving right along, I
20 want to --
21 COUNCILMEMBER ROCHE: Can we get the bids
22 over with?
23 MAYOR JENKINS: Steve, do you have anything
24 to comment on?
25 MS. KOONTZ: Just one real quick thing.

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1 COUNCILMEMBER ROCHE: Oh, I'm sorry.
2 MS. KOONTZ: The only thing that bothered me
3 about what happened with George -- and not that I
4 really agree with what he had to say or the way he
5 presented himself because he was a pretty abrasive
6 person -- but I didn't like the -- I guess the -- I'm
7 trying to think of the word -- the policy that kind of
8 got started by allowing a councilperson's agenda item
9 to get voted off the agenda.
10 That's kind of a dangerous thing, because if
11 you ever get to the point where you've got four
12 councilpeople that don't like two of the other
13 councilpeople, they can vote off any agenda item those
14 other two people wanted to put on and talk about, and
15 that's just kind of a dangerous situation to get
16 started by allowing that to happen.
17 You know, maybe there was some other way of
18 not letting him speak if you didn't want to or let him
19 get up and start talking, and if he started getting
20 unruly, then shut him down. But to have voted to
21 remove somebody's agenda item is just -- it's kind of
22 a scary proposition.
23 That was my problem with it. Thank you.
24 MAYOR JENKINS: Thank you.
25 COUNCILMEMBER FLEMING: Mr. Mayor --

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1 MAYOR JENKINS: Susan, do you want to
2 comment?
3 MS. FRAYSSE: I am kind of at a loss to
4 address all of the issues that Kay Bird covered. It
5 was way more comprehensive.
6 I'm addressing the issue with Mr. Anderson.
7 I think Mr. Anderson has had three opportunities to
8 show himself to the citizens of Doraville. First was
9 at the Ethics Committee. He was very rude, he was
10 very disrespectful. He was not aware of what we were
11 doing. He had no idea what that process had been for
12 us for a solid year of honestly working on it, and he
13 demeaned and debased people, and it was very disrup-
14 tive and unpleasant. Not everyone saw him at that
15 time, but I was there and did see it.
16 I saw him secondly at a Council meeting at
17 which he was rude and demeaning and divisive to our
18 Council, disrespectful of them and our city, again,
19 out of context. He doesn't live here. He has no
20 stake here. He is a professional gadfly that goes
21 around the state.
22 I have been a librarian for 32 years in
23 Gwinnett County. I understand the difference between
24 selection and censorship. The Council has the right
25 through the charter --

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And Ms. Stephe, I am confused that you are concerned that when four councilmembers decide to overrule two councilmembers, you think that's scary. That is the charter.

It was scary to me that Mr. Anderson didn't understand what had happened when he was voted off the agenda, which it is the right of the councilmembers to do.

Four to six is voting you off the agenda. There's nothing wrong with that. That's being selective. Not everything in the world is going to be heard at every single Council meeting, although, by God, we try, it seems, sometimes.

So I'm for being selective. I think the right thing happened. And I think there are a lot of issues that happen in political life that Ms. Bird addressed. I don't think they all can be tied directly to this. I think there are many, many good things and I've said so many times.

Tonight was a real effort by the Council who worked very hard and struggled with a lot of issues, and, you know, I feel very proud of them and I'm proud of our city.

- - -

(Applause)

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- - -

MAYOR JENKINS: Stuart?

Is he gone?

MR. ANDERSON: I'll pass.

COUNCILMEMBER BATES: He passed.

MAYOR JENKINS: Oh. Speak up.

MR. ANDERSON: I'm sorry.

MAYOR JENKINS: Okay. We're going to move right along, then.

COUNCILMEMBER FLEMING: Mr. Mayor?

COUNCILMEMBER BATES: Mayor, Ms. Fleming --

MAYOR JENKINS: Oh, yes, ma'am. I'm sorry.

COUNCILMEMBER BATES: -- had a question.

COUNCILMEMBER FLEMING: I needed to -- if you don't mind, I just wanted to address Stephe in a comment.

Just so that you're aware -- and feel free to read the minutes if you don't mind -- I made the motion to remove George Anderson from that agenda item but not to remove the item itself, being open meetings/open records. And if I'm not mistaken, I said, respectfully, Mr. Roche, if you wish to discuss this agenda item, please feel free to do so.

MS. KOONTZ: Okay.

COUNCILMEMBER FLEMING: So I'm just

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clarifying that it was Mr. Anderson I was removing and not the issue of open records. Thank you.

MS. KOONTZ: Okay.

MAYOR JENKINS: Yes, ma'am.

MS. FLIER: Hi. I'm Lee Flier. I live in Oakcliff.

I just wanted to make a couple of general comments about some of the things I heard, specifically about Kay's comments, first of all.

I think that sometimes there can be an atmosphere of paranoia that gets created around small issues. I think for the most part that everybody is trying to be as open as they can be and there are sometimes misunderstandings about what they can and can't be open about, and I think they're honest misunderstandings.

So I think it would help if everybody can try to recognize that there can be honest misunderstandings and people aren't necessarily trying to hide everything from you just because an Open Records request is denied or something of that nature. I think it would really help if we all tried to work to give each other the benefit of the doubt, and I think that goes for everybody.

I think that there was probably a

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misunderstanding about whether if the attorney gets carbon-copied on something it's a violation of attorney-client privilege. Maybe that's not true. Maybe that's something that needs to be addressed. But I don't think that there was anything nefarious behind that.

And it's the same thing with the Kroger/Publix incident that people keep talking about. If Kroger or Publix wanted to move here, they have their own demographic studies they do to determine whether they're going to come here or not, and if they wanted to do that, they would have told the Council a long time ago they want to do that. So there's no scheme to keep them out of here.

So I'm just saying, you know, let's try to ratchet down the paranoia and start talking to each other and trusting each other a little more.

Thank you.

MAYOR JENKINS: Thank you.

Okay. We've only got about 10 minutes left. I want to get the minutes approved for 10/19/09. Do I get a motion?

COUNCILMEMBER FLEMING: Motion.

MAYOR JENKINS: Second?

COUNCILMEMBER PITTMAN: Second.

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MAYOR JENKINS: Call the roll, please.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Okay. We also need to get the minutes approved for 9/28/09. Do I get a motion?
COUNCILMEMBER PITTMAN: So moved.
MAYOR JENKINS: Second?
COUNCILMEMBER BATES: Second.
COUNCILMEMBER ROCHE: Second.
MAYOR JENKINS: Call the roll, please.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?

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COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: We've still got a few minutes to open the bids.
COUNCILMEMBER SPANGLER: Let's do the Police Department first.
MAYOR JENKINS: Okay. So it looks like we're going to have to extend it maybe long enough to open the bids, but we want to get a --
Police Department, come on up, please.
MR. HAEBERLIN: Mayor, we also have number 5, the regulatory item.
MAYOR JENKINS: Which one?
MR. HAEBERLIN: Regulatory item on massage parlors.
MAYOR JENKINS: Oh, okay.
CAPTAIN ATKINSON: I just wanted to let everyone, Mayor and Council and citizens know that we did have a homicide this past weekend. It was a result of a robbery attempt. The subjects were

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targeted. It occurred on Winters Chapel at Oakcliff. We had some gentlemen walking down the street and they were approached and it was, like I say, a robbery. Some things happened, and the victim was shot in the chest.
We are working very hard to find out who did this, and I'll report back as more information becomes available.
MAYOR JENKINS: Okay.
CAPTAIN ATKINSON: And also I just was kind of debating on whether to make an announcement or not, but I just want to let everyone know that one of our canine officers, Sergeant Velez, he lost his 14-year-old daughter unexpectedly this past weekend as well. We are going through a tough time right now.
There has been a fund set up by the Sun Trust bank if anyone would care to make a donation in her name, and we have the information available at the Police Department. It will help offset some expenses that they're going to be incurring. She's going to be transported back to New Mexico to be buried. But I just want to let everyone know.
COUNCILMEMBER FLEMING: Had she been ill?
MAYOR JENKINS: That name again?
CAPTAIN ATKINSON: Her name is --

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MAYOR JENKINS: Yeah, but I meant what do you -- when we send money to Sun Trust Bank.
CLERK BLACKMON: I have the information in our office I can forward to you and Council --
COUNCILMEMBER ROCHE: Could we put it on the web site, please?
MAYOR JENKINS: Well, I want the audience to know, too.
CLERK BLACKMON: -- with the account number and everything.
COUNCILMEMBER ROCHE: We could just get that on the web site.
MAYOR JENKINS: What is the full name?
CAPTAIN ATKINSON: Her name is Razelle --
MAYOR JENKINS: I mean the trust will be that the money goes to?
CAPTAIN ATKINSON: The fund is in her name.
MAYOR JENKINS: Okay.
CAPTAIN ATKINSON: And I believe it's (spelling) R-A-Z-E-L-L-E.
CLERK BLACKMON: Yes.
CAPTAIN ATKINSON: Razelle, last name Velez, (spelling) V-E-L-E-Z. And like I say, Rhonda has the account number. You can reference it either way, by the name or by the account number.

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MAYOR JENKINS: Name or the account number. Do you have the -- you don't have the --
CAPTAIN ATKINSON: I don't have the account number with me.
MAYOR JENKINS: We'll post it tomorrow.
CLERK BLACKMON: And I don't think that you would want to post that publicly.
MAYOR JENKINS: No.
CLERK BLACKMON: If you could do it by name. That's what we'll put on the web site. I'm not going to post the account number for everyone.
COUNCILMEMBER ROCHE: Thank you.
CAPTAIN ATKINSON: Thank you.
MAYOR JENKINS: Pam? What did you want, Pam?
COUNCILMEMBER FLEMING: Five minutes.
MAYOR JENKINS: A moment of silent prayer?
COUNCILMEMBER FLEMING: No, no. Five minutes. I need a five-minute break.
MAYOR JENKINS: Oh. Well, we will take a break.

- - -

(Brief recess)

- - -

MAYOR JENKINS: Meeting come back to order.

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We're going to open the bids and then turn them over to Mr. Pittman --
COUNCILMEMBER PITTMAN: No relation.
MAYOR JENKINS: -- and let him decide.
Are you ready?
COUNCILMEMBER FLEMING: I'm ready.
MAYOR JENKINS: Everybody go ahead and open and start out with Maria.
COUNCILMEMBER ROCHE: I've got one. All right. The Magic Team in Suwanee, Georgia. Proposed estimate is $45,500 per calendar year.
MAYOR JENKINS: You got that, Rhonda?
CLERK BLACKMON: Yes, sir.
MAYOR JENKINS: Okay. Somebody got one ready?
COUNCILMEMBER ALEXANDER: CMS of Georgia, Incorporated, in Lilburn, and it looks like the stated total is $33,512.56.
COUNCILMEMBER FLEMING: Baton Facilities Management, annual cost $48,000.
MAYOR JENKINS: D.M. Burr, $33,216.96.
COUNCILMEMBER BATES: Imagann Cleaning Service, Inc., of Lithonia, Georgia, $29,232.
COUNCILMEMBER SPANGLER: I have Nature Seal Cleaning Services and this is out of Snellville, and

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it's a once-a-month average, is $47,561.86.
COUNCILMEMBER PITTMAN: I have American ServCo, $16,800.
COUNCILMEMBER ROCHE: I've got Clean Touch, Incorporated, Janitorial Service, $40,800 per year.
I have another one. ACTS International, Snellville, Georgia, $17,519.04 yearly.
MAYOR JENKINS: Wow.
COUNCILMEMBER FLEMING: American Facility Services listed a per-month at $2,250, which should be $27,000 per year.
COUNCILMEMBER BATES: Davis Executive Services; Monday, Wednesday, Friday, $3,824 per month; Monday through Friday, $5,956 per month.
COUNCILMEMBER ALEXANDER: General Building Maintenance, Incorporated, out of Atlanta. They quoted a per-month fee of $1,405.
COUNCILMEMBER ROCHE: OJS Systems, $32,388 per year.
COUNCILMEMBER BATES: CHI-ADA Corporation, $35,464.
MAYOR JENKINS: That's yearly?
COUNCILMEMBER BATES: Yes, sir.
MAYOR JENKINS: All these were put out as three days a week and waxing and stripping twice a

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year.
I have one for June's Commercial Cleaning Service, $5,000 monthly.
COUNCILMEMBER BATES: Was that for the whole city including our house?
MAYOR JENKINS: No comment.
COUNCILMEMBER ROCHE: Is that all of them?
MAYOR JENKINS: That's the way I looked at it. It says $5,000 monthly. They waive the first cleaning up. They waive the first real cleaning of $600. That is awful high.
COUNCILMEMBER BATES: It sure is.
MAYOR JENKINS: Is that the way you read it? Look over it and see.
COUNCILMEMBER SPANGLER: Yes, sir, it is.
MAYOR JENKINS: All right. Is that all of them? Rhonda, is that all?
CLERK BLACKMON: That is all that I'm aware of, yes, sir.
MAYOR JENKINS: Okay.
COUNCILMEMBER ROCHE: Well, we were talking about -- just during the break, I had discussed this with the City Attorney.
If no one objects, I'd like to make a motion that we turn these bids over to Mr. Bobby Pittman,

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who's in charge of Public Works, and he can in turn select the top three finalists, which we will select at the next City Council meeting if that works for everybody.

MAYOR JENKINS: Do I get a second?

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Scott, item number 5.

MR. HAEBERLIN: This will be Mr. Weed and myself.

We have a regulatory amendment which is Massage Parlors, and I hit the highlights. I know the Council has read this but the public might not be

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aware.

This would limit massage parlors based on population. Currently there is no limit in the city. This would be based on one per 3,000 residents, one massage parlor per 3,000 residents. Again, that's based on census data. This would also lower the hours that they remain open. In the evening, they're currently allowed to be open till 11:00 p.m. It would be lowered to 9:00 p.m. It also sets forth a regulatory fee of $5,000 for an application.

This did receive input from both myself and Mr. Weed and it's been sent to the Council, and I do recommend that you adopt this regulatory amendment.

Mr. Weed?

MAYOR JENKINS: Comments?

COUNCILMEMBER SPANGLER: Make a motion to --

You have something?

COUNCILMEMBER BATES: I do.

COUNCILMEMBER SPANGLER: Well, I can make the motion and --

COUNCILMEMBER BATES: Absolutely.

COUNCILMEMBER SPANGLER: -- then you can --

COUNCILMEMBER BATES: Absolutely.

COUNCILMEMBER SPANGLER: I make a motion to adopt this ordinance.

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MAYOR JENKINS: Do we get a second?

COUNCILMEMBER ROCHE: Do we need to waive first reading?

MR. HAEBERLIN: Do we need to waive first reading?

ATTORNEY WEED: Well, this has been on a prior agenda if I remember correctly.

MR. HAEBERLIN: I don't recall that.

CLERK BLACKMON: No. I think we added it.

MR. HAEBERLIN: No.

CLERK BLACKMON: This is the first.

ATTORNEY WEED: Okay. Oh, you're right. That's right. Yes, we have to waive first reading. This has not been on a prior agenda. Thank you.

MAYOR JENKINS: Okay. Do I get a motion we waive first reading?

COUNCILMEMBER SPANGLER: Motion to waive the first reading.

MAYOR JENKINS: Second?

COUNCILMEMBER ROCHE: Second.

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

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CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Motion to adopt?

COUNCILMEMBER SPANGLER: I move to adopt this ordinance.

MAYOR JENKINS: Do I get a second?

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: Okay.

COUNCILMEMBER BATES: I have a couple real quick questions regarding the population. The numbers don't work for me. It says there may be up to one massage parlor per 3,000 residents, and based upon the 2000 census of 9,862, that, to me, reads three. But it further goes on to say no new massage establishments shall be licensed until the existing number falls below seven.

ATTORNEY WEED: That's correct. We have to lower that to three. Thank you for pointing that out.

COUNCILMEMBER ROCHE: Right.

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COUNCILMEMBER BATES: And there's two instances of that.
ATTORNEY WEED: Yes. And the number seven was based upon the concept of --
COUNCILMEMBER BATES: That there are seven legally operating now.
ATTORNEY WEED: Correct.
COUNCILMEMBER BATES: There are far more than that as I have identified by visual inspection.
ATTORNEY WEED: We are in contact with the Police Department.
COUNCILMEMBER BATES: And the regulatory fee, is that a maximum? a minimum?
ATTORNEY WEED: That's as high as we can go in my opinion.
COUNCILMEMBER FLEMING: Now again, when an applicant comes in for a foot massage parlor, this ordinance doesn't apply to them.
ATTORNEY WEED: It does. The way massage is drafted in the Code currently in the sections I didn't change, not only would it apply to them. If they have a business -- if it was a hair salon who wanted to do massage on the side, this ordinance would apply to them as well.
If you have massage as any part of your

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business even if it isn't the main part of your business, you are considered to be a massage parlor for purposes of the existing ordinance.
COUNCILMEMBER BATES: And would this apply to podiatrists with reflexology as part of their --
ATTORNEY WEED: I believe so. Let me check. Let me get to the section.
COUNCILMEMBER BATES: And certified massage therapists, this would apply to them, obviously.
ATTORNEY WEED: Yeah. I didn't modify those provisions of the existing code, so whatever's already in the books is what we -- what we go with. Give me one second.
Massage establishment means any establishment having a source of income or compensation derived from the practice of massage and which has a fixed place of business where any person engages in or carries on any of the activities involved in massage. And then massage is rubbing, tapping, pounding, vibrating, et cetera, et cetera, using ointments and lotions, and people pay money for it or there's some gratuity or exchange.
Then there is a subsection of exemptions. 6-298 Defenses, it shall be an affirmative defense to any charge under the violation of this ordinance --

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I'm paraphrasing -- if you are one of the following professions: physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly licensed by the state; nurses who are licensed; barbers and beauticians who are licensed under the laws, except that this defense shall apply solely to the massaging of the neck, face, scalp and hair.
So if you were doing foot massage, as I said before, it's covered, but if you're rubbing someone's head after you give them a haircut, that's okay.
COUNCILMEMBER FLEMING: But it excludes those that you just mentioned; is that correct?
ATTORNEY WEED: Yes, ma'am.
COUNCILMEMBER FLEMING: Thank you.
COUNCILMEMBER BATES: I have no more questions.
MAYOR JENKINS: Okay. Does anybody else have questions?
COUNCILMEMBER ALEXANDER: The effective date will be today? tomorrow?
ATTORNEY WEED: If you pass it, yes, ma'am.
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?

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COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Okay.
COUNCILMEMBER SPANGLER: Motion to adjourn.
MAYOR JENKINS: Second?
COUNCILMEMBER PITTMAN: Second.
MAYOR JENKINS: Call the roll, please.
COUNCILMEMBER ROCHE: I have to say I'd prefer to do citizen comments if there's someone who wants to say something.
MAYOR JENKINS: Okay. All right, Bob?
COUNCILMEMBER SPANGLER: Yes.
CLERK BLACKMON: Withdraw motion?
MAYOR JENKINS: Bob made the motion to adjourn. If he'll add 10 minutes, okay; otherwise, we adjourn.
COUNCILMEMBER SPANGLER: Whatever time it takes for the citizens comments.

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COUNCILMEMBER ROCHE: Thank you.
MAYOR JENKINS: Okay.
MS. HOFFMEISTER: Bonita Hoffmeister, Oakcliff Estates.
Honorable Mayor, City Council, thank you very much for passing the ordinance on massage parlors. I hope it will be a giant leap towards preventing bad businesses and encouraging good businesses.
When you discuss your liquor license, I hope you bear in mind that we have two establishments in town that I go to that would be in violation of these, and one is Baldino's and the other is Monterrey's.
Please bear in mind that there's a fine line that you must walk in order not to prohibit what's already here, what precious little is already here that we do go to, and to encourage good environments for entertainment but keep something similar to Red Velvet out of our town because we do not have more of the boom-boom that sounds like an aircraft trying to take off in fields from over in Tucker and I can hear it in Oakcliff.
Thank you very much.
MAYOR JENKINS: Thank you. Next?
MR. ANDERSON: Stuart Anderson. I raised my

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hand on the last issue about the massage parlors.
Does the ordinance have any provision in it for buying and selling those businesses; i.e., if we have seven and we're hoping to reduce them, can they just continue on by continually selling each other the businesses and is there a turnover that way?
And to address Mr. Roche's GM development, I argued for protection. The zoning that I was talking about, the PUD zoning, is for protection. We seem to be all of a sudden in a scramble, cobbling together C-1 and M-1 in the GM plant area, and that just makes my point: that all of a sudden we've realized that we need to change that zoning. The PUD zoning would indeed provide the defense or the legal defense for our vision if something happened in there.
The other thing is the ethics, the direct and indirect, our financial policy discussion with direct and indirect is something that Murray and I have butted heads with a little bit in discussion earlier last year about the ethics ordinance, and that was the directly or indirectly statement, and Mr. Weed said that indirectly was simply out because everything is indirectly affected. I'm looking for clarification on that.
So that selling the businesses and the

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massage thing, seeing the dichotomy, I believe, in the ethics versus the -- the ethics ordinance versus the financial policy in particular, and I just wanted to mention that the PUD zoning would offer us some protection, some -- some vision. Thank you.
MAYOR JENKINS: Thank you.
COUNCILMEMBER FLEMING: Mr. Weed, is the massage parlors grandfathered in?
ATTORNEY WEED: Not per se. Section 6-317, Sale, Transfer, Change of Location: Upon the sale, transfer or relocation of a massage establishment, the license therefor shall be null and void unless approved as provided by Section 6-301 -- which I'll get back to in a minute -- provided, however, upon the death or incapacity of the licensee or a co-licensee, any heir or devisee of a deceased licensee or any guardian or an heir or devisee of a deceased licensee may continue the business of massage not to exceed 60 days to allow an orderly transfer of the license.
And then under 6-301, I believe that provides -- that's the general rules about granting a massage establishment license generally, so --
MR. ANDERSON: Can it be sold?
ATTORNEY WEED: Well, I mean based upon what I just read, I would say that the answer is no.

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MR. ANDERSON: That's what I thought. I'm just asking.
And do you wish to address the ethics versus the financial ordinance?
ATTORNEY WEED: That's up to the Council, Mr. Anderson. I'm --
COUNCILMEMBER ROCHE: I'm fine with it. I don't know what the question is, frankly.
MAYOR JENKINS: This is on the citizens comments.
MR. ANDERSON: In the Ethics Ordinance last year, it was very clear to me that the word "indirectly" was taken out of the Ethics Ordinance.
In this financial statement today, "indirectly" and "directly" were both included. That would seem to be a conflict by leaving "indirect" in the financial policy and taking "indirect" out of the ethics policy.
COUNCILMEMBER FLEMING: Well, maybe we can address that since we tabled that particular item or postponed it to another meeting.
COUNCILMEMBER ROCHE: Yeah. We don't have a new financial policy yet.
MAYOR JENKINS: Thank you, Stuart.
Next?

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MS. KOONTZ: Quick announcement. November 10th, Tuesday, at 6:30 in this room we're going to have a Veterans Day event which the whole city is invited to. The Kiwanis Club is putting it on, and I hope the Council, the Mayor and as many of y'all that want to come will come and celebrate the veterans that served our country and celebrate Veterans Day with us.

Thanks.

- - -

(Applause)

- - -

MAYOR JENKINS: Thank you.

Anybody else?

- - -

(No response)

- - -

COUNCILMEMBER SPANGLER: Motion to adjourn.

COUNCILMEMBER ROCHE: Second.

MAYOR JENKINS: Call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

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CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Meeting adjourned.

- - -

(Meeting adjourned at approximately 9:55 p.m.)

-o0o-

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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 9th day of November, 2009.

_____

Theresa Bretch, CCR

Permit No. B-755

[SEAL]

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