

**TOWN OF MOUNT PLEASANT, SOUTH CAROLINA  
POLICE, JUDICIAL & LEGAL COMMITTEE  
Monday, July 2, 2018**

**Municipal Complex, Committee Meeting Room, 3<sup>rd</sup> Floor  
100 Ann Edwards Lane  
Mount Pleasant, SC 29464**

**Minutes**

Present: Mayor Will Haynie, Chair, Gary Santos, Joe Bustos, G.M. Whitley

Staff: Eric DeMoura, LeVica Kirvin, Chief Ritchie

Also: David Pagliarini, Corporation Counsel

Mayor Haynie called the meeting to order at 9:38am.

**1. Approval of Minutes from the June 5, 2018 meeting**

Mayor Haynie asked that the minutes from June 5, 2018 meeting be approved.

*Ms. Whitley made the motion for approval; seconded by Mr. Santos. All in favor.*

**2. Public Comments**

Mr. Kevin Cunnane, 3032 River Vista Way of Mount Pleasant, stated he was there to comment on the Attorney General's letter. He stated council has a responsibility to make the matter that happened, right. He stated it is not about laying blame as much as taking responsibility for what happened. Mr. Cunnane stated council has an obligation to be open and transparent. He added it seems the Attorney General thinks the council, as a body, was not transparent last year. He stated that needs to be addressed. Mr. Cunnane stated council will have failed if they do not make substantive changes to prevent it from happening

again. He stated council needs to take responsibility for what happened and make it good by the citizens.

Mr. Denis Blyth, 610 Pelzer Drive of Mount Pleasant, stated he was one of only two members of the public that were still in attendance of the meeting that lasted five and a half hours and ended at 11:30pm. He stated he left the meeting right before the second executive session happened knowing there would be no action on the first. He stated he, along with many other people who were in attendance that evening, was deceived. Mr. Blyth stated there were over 100 people who spoke at the meeting that night. He explained most were there to talk about single member districts but also to talk about transparency in town government. He stated the Mayor, at that time, decided not to have the vote on the results of the first executive session and delay it until later without telling anyone about it. Mr. Blyth stated the Mayor spent five minutes congratulating and thanking the citizens for showing up and participating. He stated the Mayor voted in favor of a Code of Conduct for Council. He expressed it was an unbelievable night, a night that seems like fiction. He stated there were so many out of order motions and movements. Mr. Blyth stated the primary thing is that there were two votes to go into executive session, the second was out of order by Roberts Rules of Orders and should not have occurred. He added this was the one that finally led to the vote. Mr. Blyth stated no executive session should have been held on this issue and the action to agree to the settlement of the suit would not have occurred. He stated by Town Ordinance, Roberts Rule of Order govern the conduct of town meetings. Mr. Blyth stated the entire discussion from the point of the failed motion to go into executive session until the second motion was out of order. There was no motion on the floor, council was discussing a failed motion, which is not debatable, which span over 30 minutes where the ramifications of the failed vote and the individual council members perceptions of their potential liabilities were discussed. Incorrect advice was received from one town attorney. And a refusal to supply advice by another was received. He stated we know now, from the Attorney General's letter what the town attorney should have known then, that

the individual council members were immune from liability. He stated the Mayor asked for a motion to reconsider the failed vote. The Mayor recognized Mr. Carrier's motion to reconsider and Mr. Smith seconded the motion. He added Mr. Pagliarini stated that the circumstances had changed and a motion to reconsider could be made but fails to instruct that a motion to reconsider can only be made by a member on the prevailing side of the original motion. Mr. Carrier, Mr. Smith and the Mayor were all on the failed side of the original motion. He added it should never have happened.

### **3. Police matters**

#### **a. Employee years of service recognition**

Chief Ritchie explained there was a scheduling conflict and he would therefore recognize the individual internally.

### **4. Judicial matters**

#### **a. Discussion regarding a process governing the reappointment of municipal judges**

Mr. DeMoura stated this item was on last month's agenda and Mr. Santos asked for it to be placed back on today's agenda.

Mr. Santos stated he believed the committee was going to try and come up with some type of criteria for the judges. He stated he does not agree with term limits. Mr. Santos stated that if they have judges that are doing a good job then they should continue to serve. He stated there is criteria for all other Town positions and questions why there is not any criteria in place for judges. Mr. Santos stated he does not know what type of criteria would be applicable but added he is open to hearing any suggestions. He stated there needs to be more of a process in place other than a submission of a letter asking to be reappointed. Ms. Whitley stated the key factor is that the process should be made public. She stated it should be an opportunity for individuals who are

not already appointed to apply for the position. Ms. Whitley explained this way more opportunity is created for others and not that someone gets to keep this position until they do not want the position any longer, especially since it is a paid position not a volunteer position. Ms. Whitley stated criteria is really hard to determine because it is a judge's position and all up to their discretion on how they rule. She stated more important for her than having criteria to evaluate is having an open process for people to apply so it is fair and public.

Mr. Bustos stated judicial independence is very important. He does not want them to be seen as evaluating based on guilty verdicts or innocent verdicts. He stated he agrees if an evaluation is reviewing items such as the judges arriving on time or being present when they are supposed to be; -but added trying to hold the judge to a one loss record is dangerous in his opinion and they do not want to get into that.

Mayor Haynie agreed with Mr. Bustos. He asked what can be done to make the process more public.

Ms. Whitley stated having an application process. She suggested six months before someone's term comes to an end that it be announced in council meeting that there's an opportunity and availability the same way they do with committee and commission appointments.

Mayor Haynie asked what they do now.

Mr. DeMoura stated they could follow the same process and if the Mayor and committee felt if appropriate they could make a recommendation to council and council could weigh in upon a positive vote and then they could look at amending the Ordinance and bring it back for their consideration.

*Ms. Whitley moved that the item be brought to full council and recommend that they make this a public application process for the judges; seconded by Mr. Santos. All in favor.*

Mr. Bustos asked Mr. DeMoura if at one time this was the process. Mr. DeMoura stated he believed years ago that was how the process was handled.

## **5. Legal matters**

### **a. Review of the process for answering Freedom of Information Act (FOIA) requests**

Mayor Haynie stated he believed this item was to answer questions regarding FOIA requests received from the public as well as requests received from council. He stated Mr. Brimmer had asked that this item be addressed as well.

Mr. DeMoura stated the Town receives FOIA requests quite often. He stated the general feeling was that council wanted to make sure that staff was following FOIA requests by the book and treating everyone the same and that was his understanding of what was being addressed with this item. He stated as the Administrator for the Town that whoever requests information through the FOIA process that they treat everyone the same no matter what.

Mayor Haynie asked what they do when they get something that is just so voluminous that it is a major chore.

Mr. Pagliarini stated they have received a lot of time consuming FOIA requests lately. He explained Legal works with all departments and the general process is that Legal asks each department to approximate the time that they are going to need to find the information being requested. An estimate is then sent to the requesting party and per state statute a deposit is requested to help cover costs. This way the Town does not spend all the time, money and risk of not getting paid at the end. Mr. Pagliarini explained some time the estimate goes up and sometimes it goes down depending on the amount of work. He stated the state passed significant changes in our FOIA laws last year, so they are restricted on what they charge and that is published.

Mayor Haynie asked if a log is kept every time a FOIA request is received and asked if they have two weeks to respond.

Mr. Pagliarini stated there are several sources where the citizens can make requests such as basic police reports that they make available. He

stated what Legal has recommended to all departments is that any questions and FOIA's be sent to Legal and therefore it is calendared with an appropriate response date. Once it's calendared, Legal sends an initial response within the time frame and then there's a period after that where they have to locate the information. He explained in some cases it is a few days and there are some instances when they have to go to an outside third party and it could take weeks depending on the level of information requested.

Ms. Whitley asked if council is charged the same way the general public is charged when making FOIA requests.

Mr. Pagliarini stated he believed this was one of the reasons this item was placed on the agenda.

Mr. DeMoura stated the process is tricky. He stated council members have access to information any time. He stated requests received from council members should be retrieved by staff as a matter of being able to do a council member's job. He asked when does it a trigger into something much greater. Is it when there is a larger expense to the Town and therefore at that point and time should the elected official be treated as a member of the public and charged for that information. Mr. DeMoura stated it seems nonsensical for an elected official who wants information on how many traffic tickets are written monthly to pay for that type of information because that is information that the elected official should be able to get quickly as a matter of course. He stated when it goes into something bigger, that requires a lot more time, his sense is that it has been the feeling of council that the elected official should be charged and treated like everyone else in the rest of the process.

Mr. Bustos stated that if an elected official is requesting a lot of information without a purpose then they should pay for it.

Ms. Whitley stated she agrees with Mr. Bustos.

Mayor Haynie stated who decides what is meaningful information and what is not.

Mr. DeMoura stated that is difficult especially when the person who makes the decision, namely the Administrator, answers to the members

of council. He stated he would like to impress is that this is a rare occurrence and suggests they wait until the next request before making a decision.

Ms. Whitley stated she recently recalls the Town having to hire outside help to fulfill a large request in a timely fashion and suggested that be the bar of demarcation. She stated if the request is something that could be easily handled internally, without staff going into overtime or working weekends, and is in the scope of council's duties versus if council makes a large request. Ms. Whitley stated she did not know how much that cost the Town and asked where that came from out of the budget.

Mr. DeMoura stated the request Ms. Whitley is referring to came out of legal services.

Ms. Whitley stated that is a good line to draw. And added there is not so much who is in charge it is based on do they have the employees to do the job or if outsourcing is needed.

Mr. Bustos stated a written justification should be received for larger requests. He stated for example if a committee chair needs to know the number of houses that were built last month versus if it is something that goes beyond the normal scope of what someone is doing in committee work. Mr. Bustos stated there should be a written request for documents and why the information is needed so that it can held as a public document.

Mayor Haynie asked if under the law when someone makes a FOIA request, if the FOIA request is a public document.

Mr. Pagliarini stated in the affirmative. He stated anything they receive from any citizen, council or otherwise is a public document. He added unless there is some privilege that would apply, which is very restrictive, they are all public documents. Mayor Haynie stated he is more worried about Mr. DeMoura's role because he has to administer this process.

He asked Mr. DeMoura if he had the guidance he needs at this point.

Mr. DeMoura stated he does and stated that anytime outside counsel is needed to complete a request that is a good trigger for when a cost should be assessed.

**b. Discussion of and possible action regarding proposed non-discriminatory policies**

- i. An Ordinance amending Title IX (General Regulations) by adding a new Chapter 98 titled Prevention of Discrimination in the Rental and Sale of Housing. (Ord. No. 18044)**
- ii. An Ordinance amending Title IX (General Regulations) by adding a new Chapter 99 Titled Equal Enjoyment and Privileges to Public Accommodations. (Ord. No. 18045)**

Mayor Haynie explained some of this item came from the Human Resources Committee and some is broader than the Town's Human Resources.

Ms. Whitley explained that the Town does not have any non-discrimination Ordinances in place that deal with fair housing or public accommodations. She stated what the Town does have is a non-discriminatory Ordinance relating to public assemblies and parades. She added what they also have in the Human Resource policies is a non-discrimination Ordinance that is very inclusive and clarifies what the definitions are of certain things. Ms. Whitley stated what she proposed with these Ordinances is that they follow in the footsteps of Charleston, North Charleston, Folly Beach and the State Capital of Columbia which all have these Ordinances in place. She stated she understands that there were some concerns with what the penalties would be and is open to a discussion about that. But added the fundamental principal that the Town does not discriminate is one that should stand strong.

Mayor Haynie asked if Ms. Whitley was referring to a rule for all the citizens or a rule for the Town of Mount Pleasant and its policies.

Ms. Whitley explained that these Ordinances would deal with fair housing and with public accommodations, so someone would not be able to refuse to rent to someone based on their gender, their race or sexual orientation and discriminate based on those items. Ms. Whitley explained in the State there is a religious freedom act in the 1990's that covers people that object based upon religious objections. She stated this would cover everyone beyond that because State law preempts.



Mr. Pagliarini agreed with Ms. Whitley's summary of the Ordinances. He stated the Ordinances have been passed by several jurisdictions and believe they were passed approximately 10 years ago. He explained the Town at that time did not pass similar Ordinances for reasons unknown. Mr. Pagliarini stated one of the questions they fielded from several council members is an appropriate penalty. He explained as the Ordinances are drafted that is based currently on the catch all misdemeanor, there is an Ordinance with the Town that says if you violate an Ordinance there's a misdemeanor.

Ms. Whitley stated they had also discussed, for those with concerns with it was a misdemeanor, that it just be a civil penalty and allow there to be private handling of these matters. But if it is brought to the Town as a violation that it be a civil penalty maybe \$500.00 or \$250.00.

*Mr. Santos moved that they approve item 5(b)(i) and (ii) as described by council member Whitley.*

Ms. Whitley asked Mr. Santos if this would be to amend the Ordinances to change it to a civil penalty or would it be to maintain the Ordinances as written as a misdemeanor.

Mr. Santos asked if Ms. Whitley's recommendation was to change it to a civil matter and if so, he would include that in the motion.

Mayor Haynie asked that the motion be restated.

*Mr. Santos moved to approve item 5(b)(i) and (ii) as described by council person Whitley and to also add the civil penalty clause as mentioned; seconded by Ms. Whitley.*

Mayor Haynie asked if someone goes to rent a house and they are turned down for a legitimate reason and they maintain that they were turned down for one of the non-discriminatory reasons where would that be adjudicated. He asked if that individual would come to the Town and file a complaint that there were turned down for another reason. At the same time how do they avoid taking away from their citizens their right to turn people down on legitimate business reasons when they may claim they are a victim of some sort of discrimination.

Mr. Pagliarini stated that aspect pertains to enforceability. He added he always defers to the Chief on how the Police Department decides on whether to issue a ticket or some sort of criminal penalty. He stated in the civil penalty there would have to be some sort of process to where each claim is weighed on its individual merit. Mr. Pagliarini stated that is what is done for everything in the Town, whether it be a violation of a zoning code or any other violation it is handled on a case by case basis.

Ms. Whitley stated this is already in our code for public assembly and parades. She explained if someone were to come in and want to do a public assembly or a parade and were turned down because it was too many people or not paying the permitting fees and tried to say it was discrimination they would go on the facts of the case. The same applies to applying to rent a house if someone has a poor credit history that is a determinative factor as to why the individual was turned down.

Chief Ritchie stated if civil and not criminal this is not something where you would be taking someone into physical custody. He stated if it is a Town Ordinance a Town citation would be issued based on the facts that the Police Department receives at the time. Chief asked Mr. Pagliarini if at that time would the case be brought into court to be heard for a civil fine.

Mr. Pagliarini asked Ms. Copeland to explain the proposed path of a civil penalty.

Ms. Copeland stated a person could challenge the fine or the penalty in our Municipal Court. If they wanted to file a civil action these Ordinances do not provide a private right of action, they would have to take that to civil court under the protections provided by Stated or Federal Law.

Chief Ritchie stated they would respond to the call, document the facts and if it was warranted issue the Town Ordinance Summons and then be handled in court. He stated the way he understands it is that there is nothing in the Ordinance where the police would take an individual into custody because it is not criminal.

Mayor Haynie asked if there were any cases with this discriminatory behavior in the Town.

Mr. Pagliarini stated he was not aware of any in the Town. He added in doing the research on this item if there have been any in the neighboring jurisdictions they are not aware of any over the last several years.

Mr. Bustos asked if someone called the police and said they had been discriminated against for renting a house or an apartment would a police officer respond and be responsible, or would a detective be responsible for then digging through the facts of the issue before a ticket could be written. He questioned how much time should be spent on this tying up a police officer to ascertain the real facts of the case.

Chief Ritchie stated he would encourage staff to take the report and have Legal review it to see if there was some discriminatory act. He explained currently there is a Courtesy Summons Affidavit in place that can be signed by the complaining person making the claim. Chief Ritchie stated this process would prevent the officer from having to write a ticket.

Ms. Whitley stated given the history and what is known from the other municipalities, is it not like placing these Ordinances in place is going to open the flood gates and 1,000 people are going to show up at Town Hall on day one. She stated it is good to have non-discrimination Ordinances in place in our Town and added there should be no question that the Town of Mount Pleasant does not discriminate.

Mayor Haynie stated he agrees with Ms. Whitley and is not trying to argue the intent of it but wants to discuss the application and the just application of it. He stated this is all new to him and he is unsure if he totally understands how the Police Department writes a citation based on what someone thinks someone else was thinking when they said no. He stated he always thought it was civil, he did not realize law enforcement went out and did that. Mayor Haynie stated by making it a civil penalty that it would give someone rights in civil court to say they have been unjustly denied. He added he did not know when he first started reading through the Ordinances that they were going to send our police out.

Mayor Haynie stated he does not know if that is the best way to handle it. He stated he is not saying they want discrimination in Mount Pleasant he is only speaking to the application of the penalty.

Mr. Bustos stated he does not know if he is totally comfortable with this item yet either until they know a process of how this is going to be handled. He stated whether it is firmly civil, and added he does not believe it is criminal, but there will be people with a complaint so when it does happen they have a clear path so when it does happen they are not putting an officer, the Chief or Legal Department in a position of sorting through it all. Mr. Bustos stated it needs to be sorted out before they put the Ordinance in place. He suggested deferring it to next month and have a clear the path described so they all have a good comfort level before they recommend to full council that this be done.

Ms. Whitley asked Ms. Copeland if there is anything in place where that can be fully explained to council at the meeting next Tuesday or would it take a month to get it in order. She stated the procedure is something that needs to be explained to full council.

Ms. Copeland explained that she and Chief Ritchie just worked it out.

Chief Ritchie stated that there is a Courtesy Summons Affidavit that is currently being used in a he-said-she-said scenario. Where someone comes to the Police Department and the police do not have enough information where they are comfortable writing a ticket where a complainant can come to court and sign their own affidavit that they were harmed or discriminated against and this gets them in front of a judge.

Ms. Whitley stated because the Police Department deals with these types of situations all the time and this would simply be another Ordinance that has some he-said-she-said involved. She added there is therefore already a procedure in place for these types of situations.

Chief Ritchie agreed and stated that is the Courtesy Summons Affidavit they can do and added there is no jail involved or no one being taken into custody and would work well in these cases.

Mayor Haynie asked Mr. Bustos if that answered his questions. He stated it answers it for him.

Mr. Bustos stated it is everyone's right to go a Magistrate and get a warrant to get it into court. He asked if Municipal Court is the proper place for that. He stated this seems to be more civil than criminal.

Mr. Pagliarini asked Mr. Bustos when he refers to civil is he referring to a lawsuit for money damages.

Mr. Bustos affirmed he was.

Mr. Pagliarini stated that is already available under state law. He explained this does not provide an additional cause of action or legal cause of action under Mount Pleasant Ordinance. He stated he wanted to make the distinction when talking about civil action. Mr. Pagliarini explained with civil penalty there would still be a penalty and as Chief Ritchie described the process, law enforcement would be involved, decisions would have to be made in each circumstance as to whether it violates the Ordinance.

Mr. Bustos stated he still was not comfortable with all of it yet. He added he was not saying eventually he would not be but for now he is not comfortable.

Mayor Haynie asked if there was any public comment.

Ms. Kathy Landing, 2114 Sewee Indian Court of Mount Pleasant, stated as the Chair of Human Resources (HR) Committee she explained this item was presented in their committee and added it is a very good thing to consider and potentially codify in some way. She stated the initial process started a few months ago by council woman Whitley and was more about the Town's policy in terms of hiring and treatment. Ms. Landing stated it was placed on the HR committee and believed it is the proper place to handle that matter. Ms. Landing stated they felt very strongly it should be codified within the Town's policy. She stated the section about the rental and housing started on a path that was a little beyond the scope of HR and more on policy for the community. Ms.

Landing stated she was glad it was being reviewed by the committee members.

Ms. Landing read from the drafted Ordinance regarding the public accommodations “That this means that any business in Town, including any privately-run business, has to abide by this Ordinance”. Ms. Landing stated what they have on the books now is based on Title IX and Title IX refers to any federal funds that are provided to something. She explained if someone is running a restaurant or a catering business are they getting federal funds for that. And the second part is that there is a religious act of 1999 South Carolina Law that says that people have the right for religious reasons to act in ways that maybe a lot of people would not agree with, but it is their religious right. Ms. Landing asked if an Ordinance with civil penalties the right direction or would it be better to have a resolution from the Town. She stated where as a Town they essentially condemn any type of discrimination rather than having a civil penalty Ordinance. She added she is not saying if that is the right answer she just wanted to bring that point to light.

Mayor Haynie stated since it was discussed at Ms. Landing’s committee he had asked her for some background on the item.

Mr. Cunnane stated he wanted to comment on the last agenda item regarding the judges. He stated the bar association sends a rating evaluation on judges to every lawyer and if the judge is a bad judge the lawyers are going to rip them apart. He stated that if that is not being done on the municipal side they could reach out to the bar association and add those municipal judges to that process. He added if you are a defense attorney and do not like a judge you will not be shy to tell them.

Mr. Cunnane stated a lot of minor courts around the country have done a community resolution where they bring individuals in to mediate and figure out if there is a way to work through this without punishment. He stated the goal is to prevent discrimination, not to punish someone. He stated they want to prevent it, they want to make it known that the Town is a place that does not allow discrimination. Mr. Cunnane stated that is how we could handle this type of offense and maybe the Chief

could come up with other situations with juveniles and others where things could be resolved without going through the system.

Mr. Santos stated he wanted to address Mr. Cunnane's comments. He stated that when you just tell people not to do something it does not have as much weight as if you tell them if you do it you will be penalized. He gave the example of when people are told they cannot walk their dogs on the recreation fields, but they do even though it is against the rules. Mr. Santos stated if that was enforced people would pay more attention to it and adhere to it. He stated just by telling them not to do it he is not sure it will hold as much weight as if they say if you do it there will be consequences.

Ms. Whitley stated she agreed with Mr. Santos. She stated if a majority of council cannot be onboard with the Ordinance she would propose an alternative to do a resolution but wants to start with an Ordinance because it carries more weight and it will have more impact. Ms. Whitley stated this is not revolutionary as it was done 10 years ago and is in our state capital and is the language used in the Ordinances for public assemblies and parades. She added it is expanding and clarifying for fair housing and public accommodations.

Mr. Bustos asked if they already have it then why do they need this.

Ms. Whitley stated because it only applies to public assembly and parades.

Mr. Bustos asked if it is needed since it is already at the state level.

Ms. Whitley explained that the state level does not have the clarity of definition that these Ordinances have.

Mayor Haynie stated he would like to continue this discussion. He stated what they do not want is for something like this to come up at next Tuesday's council meeting and have a split vote or a contentious debate. For these reasons he would like to bring this item back and when they go forward with either, and, or both, it is a unified council. Mayor Haynie stated people are a little confused right now as to the application of the law and what a proper penalty should be. He stated that is unfortunate

because he thinks it would be easy to pass a resolution against discrimination today. He added if they have to vote on this, they vote on this today but asks that it be brought back and get a consensus of council and try to be unified when they move forward on something this sensitive.

Mr. Santos stated he is willing to vote on it and pick it up later but at least coming out of committee that they recommend it and can always change it when it gets to council as they have time to discuss it.

Ms. Whitley added and time for it to be revised as well after first reading.

Mr. Bustos stated they never have enough time to do it right, but always have enough time to do it over. He stated he cannot support it until he knows how this is going to be enforced.

Mayor Haynie asked if there was any more discussion.

Mayor Haynie called for the vote.

*Motion failed with a 2-2 vote with Ms. Whitley and Mr. Santos in favor; Mayor Hayne and Mr. Bustos opposed.*

Mayor Haynie asked that the item be brought back to the PJJ Committee next month to discuss it in detail and ask the other council members to either attend that meeting or take a look, talk with members of the committee and make sure when this goes to full council that they are all on board.

Mr. Santos asked Mr. DeMoura since there was a motion and a second and it was tie if it goes to council with no recommendation.

Mr. DeMoura stated typically the only way it would advance from committee is if it was a planning matter and there was a timetable dictated by state law where you must. He explained since it did not come out committee it stays in committee until the Chairperson decides to bring it back up again.

Ms. Whitley asked if she was correct in that each council member has the right to place any item on the agenda.



Mr. DeMoura stated she was correct.

**c. Discussion of emergency authority**

Mr. DeMoura stated staff was asked to place this item on the agenda. He stated he assumed it is a discussion of emergency power for the Mayor position.

Mr. Bustos stated he was the one who asked that this item be placed on the agenda. He stated when the Mayor was dealing with the Wando Bridge situation and with hurricane season upon us he realized that he does not know what level of authority the Mayor has because they may have incidents where council is out of contact with Town Hall. He stated he wanted to know what authority the Mayor does have during these types of situations. He stated he thinks the Administrator as well as the Mayor has the authority to spend a certain amount of money but those are questions he does not have the answer to and thought it would be good to review.

Mr. DeMoura stated there are a couple of Sections that cover this item. He stated Chapter 41 empowers the Mayor to issue a State of Emergency to protect lives and property. Mr. DeMoura explained under the State of Emergency the Mayor has the power today to restrict freedoms however he or she sees fit. He stated in addition Chapter 30 governs council's authority where if there is an emergency, council has to say what is going on and then it does not require two readings to pass an Ordinance, so council can do it immediately at that meeting if it is an emergency and has to have an expiration date on whatever's past.

Mr. DeMoura stated the third item that speaks to emergencies is found in the procurement code which gives the Mayor and Administrator authority to make emergency purchases and it spells out what emergencies are. He added an emergency purchase that has to be made to protect lives and property.

Mr. Bustos stated the system would be that a State of Emergency could be declared and then has access to these powers.

Mr. DeMoura stated that was correct.

Mayor Haynie stated he wanted to clarify during the bridge crisis he was not exercising any powers that he is aware of. He stated they were coordinating with other agencies. Mayor Haynie stated police was making decisions with the Administrator. He said the main thing was to get information and answer questions.

Mayor Haynie stated one thing that came out of their after action is, when the Town has something that they are functioning like an emergency they should open the Emergency Operations Center (EOC) because there are certain protocols and certain accountabilities happen when the EOC is open and that is why he made sure everyone had the opportunity to get there and there are records kept of who is there and what is discussed. Mayor Haynie stated that is good practice whether it be snow, storm or any emergency to open the EOC. He stated he thought the threshold for opening the EOC was when they have more than two agencies involved, our departments and outside agencies, that are having to handle a situation.

Mr. DeMoura stated typically that is the case. He added they coordinate internally and depends on the level of what is being coordinated. He explained if it is a small type situation, mutual aid response, they probably would not open the EOC for that but something that starts to rise to the level of bridge emergencies or hurricanes then the EOC would be utilized.

**d. Discussion of Attorney General's response to Town Council's letter of inquiry**

Mayor Haynie stated the Attorney General response to Council's inquiry was issued on Friday June 29, 2018. He stated it is 15 pages long and seems to fairly address their questions. Mayor Haynie stated when they look at all the issues the Attorney General addressed about immunity, executive session and amending agendas along with all the case law and all the supreme court decisions, he would like to, rather than the committee debate, suggest getting outside legal counsel on this issue only to speak with council and how to interpret the response.

Ms. Whitley stated it was her understanding that they have an email from the Attorney General that states that at least part of the letter was

based on an incorrect assumption of facts and that there is some part of the letter that they need to ask for clarification. She stated she has not seen the email but would like to see it. Ms. Whitley stated she does not want them to go and hire outside counsel if there are things in this letter that would be changed.

Mayor Haynie stated he received a phone call at 8am that morning from the Solicitor General who wrote the opinion along with the Chief Deputy Attorney General to advise they have no plans to change this opinion. He added this will stand as written.

Mr. Santos stated he had the email and offered to read it. It states:

I think the author is off base with regard to the FOIA issue. It was the legislature's intent, when amending the FOIA, to require a 2/3 vote before allowing an action item to be added to the agenda. There is nothing in the FOIA as amended that suggests the legislature intended to restrict a council from changing the order of items that were included on a properly noticed agenda.

While I would certainly caution a council to follow their adopted rules of order when moving through the agenda, I do not believe that the changes discussed within this opinion constitute a freedom of information act violation.

Mr. Santos stated the email was received from the Municipal Association's attorney.

Mayor Haynie asked who the Municipal Association's attorney was.

Mr. Santos stated it was Mr. Tiger Wells.

Mayor Haynie stated the Attorney General's office said their opinion stands. He stated they have looked that over and they were given that information that Mr. Wells had. Mayor Haynie added they can issue you an email as to why his is incorrect. He stated they cannot ask their own attorneys to evaluate an opinion of their work as that would be wrong and put them in an untenable situation. He stated they need to ask someone else, another firm and not the Municipal Association which is a membership association to take a look at this response and if they need

to ask for questions they can ask more questions. Mayor Haynie stated because the FOIA is only a part of the inquiry the other part is legislative immunity.

Mr. Santos stated that since they are a member of the Municipal Association they would be first ones they would turn to because they are overseeing all the member municipalities in South Carolina. He stated their opinion would be very important to them. Mr. Santos stated instead of paying money to have other attorneys come in and review the document, since they already pay the Municipal Association fees for a membership, why not ask their attorney and use their opinion.

Mayor Haynie asked Mr. Santos if he also wanted to hear the Solicitor General's response to that which he heard on the telephone or did Mr. Santos just want to go with the opinion of Mr. Wells.

Mr. Santos stated he does not have a problem with going with the Municipal Association's information because the Attorney General's letter did not give the facts he just said it could conclude that counsel played musical chairs it did not say it would conclude he is just staying it may or may conclude this. This gentleman is saying his opinion is wrong. Mr. Santos said he has no reason to doubt the Municipal Association as we are members of their organization. He added the committee can do what they want but he thinks the Municipal Association information, after reading everything, is probably correct.

Mayor Haynie asked Mr. Santos if he doubts the Attorney General's office in the State of South Carolina but does not doubt the Municipal Association.

Mr. Santos stated he takes theirs as a matter of opinion only which is what he is saying but puts more precedence in the Municipal Association's attorney.

Ms. Whitley asked what the purpose is of hiring outside counsel. She asked what is the scope of the question that they would be asking them. Ms. Whitley asked if they would be asking them the same questions they asked the Attorney General as they already have the Attorney General's opinion. She asked what information this outside counsel would provide

to them that will lead to some kind of action other than what they already know that they will not do this again.

Mayor Haynie stated they had a vote on a major issue of public interest in the Town. He stated the citizens who have seen this are questioning the validity of that vote. Mayor Haynie stated they have to find out what is the Town's responsibility to make this right for the people of Mount Pleasant. He stated one of the things that affected that vote was people recusing themselves because they were told they were potentially personally financially liable. Mayor Haynie stated Ms. Whitley and others were not on council at the time, but council members had received a memo that says they are potentially financially liable. He stated what they did not get was a memo that gives these many pages of all the law and all the decisions from the appeals court and the supreme court and the legislation that says legislative immunity is inviolate as long as all you are doing is voting and not acting outside of your responsibility. He stated he is not going to ask the Town attorneys to interpret that for council he would like to ask another lawyer to interpret that for them.

Mr. Pagliarini stated he wanted to correct the record on that for Ms. Whitley. He stated he will not interpret the opinion. Mr. Pagliarini stated contrary to what Ms. Whitley heard in the public speaking portion today, the Attorney General's opinion found no problems or fault with any legal advice administered. He stated in fact as it relates to the liability of council members that information is exactly what Legal provided. He stated they have briefs filed with the court and added he takes issue with what Mayor Haynie said, all of that was provided to council and it matches specifically what was said. Mr. Pagliarini stated what was said was if a council member acts within the course and scope of their duties, as council members, they will be immune. He added he said this six months ago at council when this came up and three months ago if they act outside then they may not be immune. He stated rather than hearing his opinion on it he wanted to clarify that the information was provided, and he wants to correct any errors that may be said today that says that information was not provided because it certainly was.

Mayor Haynie asked Mr. Pagliarini if the council member who recused himself because of potential personal liability was he informed by Mr. Pagliarini or anybody else that he might have been acting outside of his legal authority so that he did not have that protection. He stated because if he was, council was not informed of it.

Mr. Pagliarini stated every council member had a discussion with Legal. He stated he was not going to say exactly what was said because he does not have the authority to violate the attorney client privilege. Mr. Pagliarini stated they are talking about words like could and maybe and possibly and that is exactly what the Attorney General's opinion said. That as long as you are acting within the course and scope of your duties as a council member you will be protected. He stated the court had not dismissed those individual plaintiffs at that point. Mr. Pagliarini stated he and the Mayor have had that discussion many times, could they be sued, could they be liable, and added there are thousands of decisions made at this Town every day.

Mayor Haynie stated they did not ask if they could be sued. He stated they understand they can be sued at any time and could even be sued for having a meeting.

Mr. Pagliarini stated he is trying to impress upon him that this information was provided. He added that there was an executive session, a meeting to discuss precisely that issue and the Mayor was not in attendance.

Mayor Haynie stated that was because he had an hour and 45 minutes briefing on that exact item the day before.

Mr. Pagliarini stated specific questions on that were issued. He stated he was not contesting why the Mayor was or was not in the meeting he just thinks it is unfair to say that information was not provided.

Mayor Haynie stated this is what he wanted to avoid because they pay the outside law firm about a half million dollars a year and council felt the need to get an inquiry and have received the response to the inquiry which is at least controversial and now here they are debating with their own lawyers whose job it is to advise council and keep them out of

trouble and this is what he was trying to avoid and this is why they need to ask someone else to help them through this process.

Ms. Whitley wanted this to be clear for the other council members in attendance, that if they were to get an outside attorney to give the Town guidance on whether the vote that happened was valid what the next step would be if it was invalid. She stated taking that to its logical conclusion of addressing that settlement if that was the ultimate goal. Mayor Haynie stated it was in addition the public's goodwill with council in terms of transparency and proper procedure and parliamentary procedure is at stake.

Mr. Bustos referenced the letter from the Municipal Association, stating "There is nothing in the FOIA as amended that suggests the legislature intended to restrict the council from changing the order of items that were included on a properly noticed agenda". He stated that is done all the time, that is not the problem. Mr. Bustos stated the problem was there were two executive sessions and a vote on the topic of the first executive session came after the first and that is not addressed in the email. He added of course they can move things on the agenda this email is absolutely nothing.

Mr. Bustos stated he was fairly irritated at the moment. He stated this goes as far back to voting on the vesting rights for the Boulevard Phase II. Mr. Bustos stated they were told they must vote for it. He stated he was told if he voted against it he would be violating his oath to the Town and asked if Mr. Pagliarini remembered that.

Mr. Pagliarini stated he did not believe that is what Mr. Bustos was told. Mr. Bustos stated that is what he was told. Mr. Bustos stated he wanted to see it writing and that he went up to the lawyers' office and was shown the State Statute that says you shall vote for it unless. He stated they were never given the unless. Mr. Bustos stated and now they have the matter at hand. He stated there have been poor interpretations of some of these Statutes. Mr. Bustos stated he voted against that vesting and was told he could not do that. He added there was a long discussion and remembers saying he did not believe the state legislature ever meant to tell a town or county council that they could not vote their

conscience but must vote for something. Mr. Bustos stated this current matter needs a review of some sort. He stated the Attorney General's opinion is their opinion but his confidence going forward for the advice they receive is not good. He added he would be less than honest if he said anything else. Mr. Bustos stated something needs to be done to sure that confidence up. He added he is certain he is not the only one that feels that way. Mr. Bustos stated he agreed with Ms. Whitley not all the individuals who were on council then are on council now and this is at least a hand slap they know better and they knew better then. He stated the majority chose to do something for whatever reason.

Mayor Haynie asked Mr. DeMoura what process was used in the past to get outside counsel.

Mr. DeMoura stated the primary focus would be to seek out a firm who has some expertise in the subject matter. He stated they have used firms in the past with local government experience. He stated if that is council's decision then he would look for a firm like that who understands the language and how local governments work. Mr. DeMoura stated he does not know how much it would cost but there would need to be some appropriation or at least some decision to spend money on this by council.

Mayor Haynie stated if they move forward with this it would be a good idea to go out of town to someone who does not know any of the members, any of the dynamics and can look at this totally objectively. He stated there are probably firms out of town who could do that.

Mr. Santos stated in the 18 years he has been on council it seems that any time they had questions in the past they would look to the Municipal Association first since they are members. He stated they are not local, they are out of town, it would seem to him that they would be good resource to go to and ask these questions. He added that is why he said he was comfortable with that because throughout the years that is what has been done, the Town has turned to them on issues that they have had before and used their opinions. Mr. Santos stated now it seems like their opinion is not good enough and he is a little bit surprised.



Mayor Haynie asked Mr. Pagliarini when a municipality gets an opinion from the Municipal Association does that establish an attorney client privilege.

Mr. Pagliarini stated it depends on the relationship whether you would want that to be public or not.

Mayor Haynie asked when Mr. Wells sent his opinion is that a privilege attorney client document.

Mr. Pagliarini stated he did not believe council or anyone requested that. He stated he believed that was of Mr. Wells own volition and based on that he would assume that is a public document.

Mayor Haynie stated what he is proposing is something where there is an attorney client relationship. He stated there are benefits and there are responsibilities and a confidentiality. Mayor Haynie stated if they do this with the Municipal Association, the Association can go talk to whoever they want to about it. He stated they cannot stop them because they are not functioning as their attorney they are functioning as someone who is a staff member at the Municipal Association. Mayor Haynie stated he is talking about a law firm that council can talk to and they can tell them however good or bad it is, and they can tell council what they need to know as their client and it is privileged information the same way they do in executive session.

Mayor Haynie asked Mr. Cunnane as an attorney for his input on the validity and the importance of the attorney client relationship.

Mr. Cunnane stated he would be more concerned about the cost factor. He stated it must be clear what they are requesting from the law firm and pay only for the analysis being requested. Mr. Cunnane stated with a 15-page document he would not pay the firm more than for 15 hours of work. Mr. Cunnane agreed outside counsel would probably be advisable.

Mr. Pagliarini wanted to make everyone aware that this is exactly what they recommended six months ago, that they get an outside attorney to look at this and not go through the Attorney General, who may or may not be qualified to answer municipal questions. Mr. Pagliarini stated the legal team requested this for their protection and for the Town's

protection six months ago. He stated Legal would not be able to provide that opinion for council and would not wish to do so.

Ms. Whitley asked Mr. DeMoura if this was something that would need to go to full council to move forward.

Mr. DeMoura responded in the affirmative.

Ms. Whitley stated this is such a weighty issue and that it is important for the full council to have the opportunity to discuss.

*Ms. Whitley moved that the issue of the Attorney General's response to Town Council's letter of inquiry go to full council for further discussion including consideration of whether to appropriate funds to hire outside counsel.*

Mr. Bustos asked for clarification and if Ms. Whitley's motion was a recommendation.

Ms. Whitley stated it is not a recommendation it is just a motion to move this to full council. She stated she is not making a recommendation on whether or not they should hire outside counsel.

Ms. Whitley stated the full issue should be discussed by full council.

*Mayor Haynie stated the motion failed for lack of a second.*

*Mr. Bustos moved that the item go to full council with a recommendation that they hire outside counsel for legal advice on the Attorney General's opinion; seconded by Mayor Haynie.*

Ms. Whitley stated she supports the item going to full council, so she will be voting in favor of this motion but at this time she would like more information before she makes the final decision on whether this goes to outside counsel.

*Motion passed with a 3-1 vote with Mayor Haynie, Mr. Bustos and Ms. Whitley in favor; Mr. Santos opposed.*

## **6. Adjourn**

There being no further business, the meeting was adjourned at 10:50am.

Minutes submitted by:

Laurie Wilson