

In The Matter Of:

City of Doraville

State of Georgia

Special-Called Meeting

November 26, 2012

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

- SPECIAL CALL MEETING -

Transcript of the meeting held in the
City Council Room at Doraville City Hall,
3725 Park Avenue, Doraville, Georgia, Mayor
Donna Pittman presiding, before Theresa
Bretch, Certified Court Reporter, commencing
at approximately 6:35 p.m. on November 26,
2012.

* * *

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1 PROCEEDINGS

2 MAYOR PITTMAN: Meeting come to order.

3 Call the roll, please.

4 CLERK BRYANT: Councilmember Alexander?

5 COUNCILMEMBER ALEXANDER: Here.

6 CLERK BRYANT: Councilmember Bates?

7 COUNCILMEMBER BATES: Here.

8 CLERK BRYANT: Councilmember Dean?

9 COUNCILMEMBER DEAN: Here.

10 CLERK BRYANT: Councilmember Fleming?

11 COUNCILMEMBER FLEMING: Here.

12 CLERK BRYANT: Councilmember Patrick?

13 COUNCILMEMBER PATRICK: Here.

14 MAYOR PITTMAN: Thank you.

15 And Ms. Pachuta will be here shortly. She

16 is running a little bit behind due to her job.

17 This is a special call meeting to discuss

18 several issues.

19 First on the agenda under New Business is

20 the City Charter Changes for City Manager Transition.

21 And I don't know the best way that Council

22 wants to handle this. If legal wants to start it off

23 and then we'll go from there, or does Council want to

24 take it little by little? How do you guys want to do

25 it?

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1 APPEARANCES:

2 Doraville City Council:

3 Mayor Donna Pittman

4 Councilmember Maria Alexander

5 Councilmember Brian Bates

6 Councilmember Trudy Jones Dean

7 Councilmember Pam Fleming

8 Councilmember Karen Pachuta

9 Councilmember Robert Patrick

10

11 Sandra Bryant, Acting City Clerk

12

13 Cecil G. McClendon, Jr., City Attorney

14 Leonid Felgin, Asst. City Attorney

15 Riley McLendon, LLC

16 315 Washington Avenue

17 Marietta, GA 30060

18 (770) 590-5900

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1 COUNCILMEMBER BATES: Give us a summary.

2 ATTORNEY McLENDON: I can say that what

3 we've done is a document has been provided to you in

4 the format of an ordinance which makes several

5 changes. They are suggested changes which by no means

6 is something that has to be done. It's a very policy-

7 oriented conversation. So these are some suggestions

8 of Charter changes that would be required at the time

9 that the City switched over to begin operating as a

10 city manager form of government.

11 So that is the document you have, and, you

12 know, each section sort of modifies the existing rule.

13 I'd be happy to comment on any of it, but again, this

14 is in front of y'all for your contemplation and

15 determination which direction to go.

16 MAYOR PITTMAN: Okay. Thank you. Well,

17 we'll start on this end with Ms. Alexander.

18 COUNCILMEMBER ALEXANDER: Madam Mayor, I was

19 wondering if Council wanted to go page by page and

20 just knock out a page as we go along --

21 COUNCILMEMBER FLEMING: That's fine.

22 MAYOR PITTMAN: That's probably --

23 COUNCILMEMBER ALEXANDER: -- because we

24 probably have --

25 MAYOR PITTMAN: -- the easiest way.

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1 COUNCILMEMBER ALEXANDER: -- a lot of the
2 same, maybe a lot of the same questions. So I'll
3 start with the first page and then the next page,
4 Ms. Dean can start.
5 The page numbering is a little --
6 ATTORNEY FELGIN: Sorry.
7 COUNCILMEMBER ALEXANDER: -- squirrely.
8 ATTORNEY FELGIN: My formatting went screwy
9 on me.
10 COUNCILMEMBER ALEXANDER: And I understand
11 about some of this that's not -- what is not stricken
12 is old, but that doesn't mean it's right, because
13 we've had some challenges, little stuff that's in
14 there.
15 On page 3, regarding the -- the notice
16 that's required for special called meetings, I just
17 want to verify like "Notice of any special meeting may
18 be waived in writing." Is that not in violation of
19 the Open Meetings law?
20 ATTORNEY McLENDON: Anything you're going to
21 have to contemplate and work within the context of the
22 Open Meetings law.
23 COUNCILMEMBER ALEXANDER: Uh-huh.
24 ATTORNEY McLENDON: I think what you're
25 talking about is those are rules that allow for either

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1 the Mayor or, as it states, two councilmen, to sort of
2 say, "We're having a meeting." So either the Mayor
3 can say, "There's a meeting next week," or two
4 councilpeople shall.
5 The Open Meetings law has to be complied
6 with. What this is just saying is that -- and there
7 would be nothing else required for any particular
8 council people.
9 Do you have anything to add to that?
10 ATTORNEY FELGIN: This particular provision
11 talks about notice to other Council members of the
12 upcoming meeting, not Open Meetings Act requirements
13 of posting a notice.
14 What this says is the Mayor does a call to
15 do a Council meeting, and this Charter requires the
16 Mayor to notify personally each Council member, or the
17 Council members can waive in writing any notifications
18 of special called meetings in such a way.
19 This doesn't concern the requirement for
20 Open Meetings Act postings. This is simply an
21 internal requirement to notify each Council member
22 directly.
23 COUNCILMEMBER ALEXANDER: So the notice is
24 not public notice.
25 ATTORNEY FELGIN: No, it's not public

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1 notice.
2 COUNCILMEMBER ALEXANDER: Okay. Regarding
3 the language "which has been served on the other
4 members personally," that was probably written before
5 we had e-mail. So I mean does that language -- could
6 we take this --
7 ATTORNEY FELGIN: I can add e-mail.
8 COUNCILMEMBER ALEXANDER: -- opportunity to
9 improve it or --
10 ATTORNEY FELGIN: I can add e-mail or by
11 electronic means if Council wishes.
12 COUNCILMEMBER ALEXANDER: And, I mean, do we
13 really want to leave that notice 24 hours at their
14 residence in there or -- It's just methods of communi-
15 cation, but like I said, this is old language.
16 ATTORNEY McLENDON: If everybody agrees with
17 this concept -- Let me just do some work on this
18 language because the reality is you've got two methods
19 of calling a meeting. So if somebody wants a
20 specially-called meeting, the Mayor can do it. If two
21 Council people say, "I want a meeting," you can call
22 the meeting.
23 Any meeting has to meet the requirements of
24 the Open Meetings Act, and this is contemplating that,
25 you know, you got to get the notice to the rest of the

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1 members. It's a lot like corporate law; that if I
2 have to have a meeting, I can't do it without the
3 members getting notice. If y'all are -- everybody --
4 no one has any objection to this, I have no problem
5 with letting me modify this and strip it down to sort
6 of the basic language we need, but I will be leaving
7 the concept of a meeting can be called by the Mayor or
8 two Council people.
9 COUNCILMEMBER ALEXANDER: Okay.
10 COUNCILMEMBER BATES: And the Mayor Pro Tem.
11 ATTORNEY McLENDON: Okay.
12 COUNCILMEMBER ALEXANDER: That's all I have
13 on that page.
14 ATTORNEY McLENDON: Okay, the Mayor Pro Tem;
15 exactly. So I'll leave that.
16 Let me look at the rest of this. I think
17 it's a good point to make. We don't need superfluous
18 language.
19 MAYOR PITTMAN: Mr. Bates? Mr. Patrick?
20 COUNCILMEMBER PATRICK: Not on this page.
21 COUNCILMEMBER FLEMING: On page 1, a third
22 of the page up, you've got in there a "party-time
23 Mayor."
24 COUNCILMEMBER ALEXANDER: There we go.
25 COUNCILMEMBER FLEMING: And I don't

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1 believe -- I don't believe that that's a proper
2 description, so please --
3 MAYOR PITTMAN: "Traditional duties of a
4 party-time."
5 COUNCILMEMBER FLEMING: Please correct that.
6 COUNCILMEMBER BATES: It might be in the
7 past.
8 MAYOR PITTMAN: Thank you, Ms. Fleming.
9 COUNCILMEMBER FLEMING: So are we up to page
10 3 and do you want --
11 COUNCILMEMBER ALEXANDER: Yeah, because I
12 missed the party.
13 COUNCILMEMBER FLEMING: -- me to ask about
14 page 2 or --
15 MAYOR PITTMAN: I believe you missed that.
16 COUNCILMEMBER ALEXANDER: I know.
17 ATTORNEY FELGIN: I'm amazed Councilmember
18 Alexander didn't complain.
19 MAYOR PITTMAN: I know.
20 Ms. Dean?
21 COUNCILMEMBER DEAN: No.
22 MAYOR PITTMAN: All right. Ms. Alexander?
23 COUNCILMEMBER ALEXANDER: Ms. Fleming, do
24 you have something on page 2?
25 COUNCILMEMBER FLEMING: I just wanted to

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1 question in regards to on page 2 where it indicates
2 that we are going to be advertising for three weeks,
3 once a week for three weeks for any of these items
4 that are listed in this document that can be changed
5 by Home Rule.
6 ATTORNEY FELGIN: Yes.
7 COUNCILMEMBER FLEMING: And let me under-
8 stand. And "The required notice will be published
9 within the statutory period of 60 days immediately
10 preceding the final adoption."
11 ATTORNEY FELGIN: Yes.
12 COUNCILMEMBER FLEMING: Okay. So that's --
13 we're still a couple months away from having done all
14 this because we have to do something 60 days preceding
15 the final adoption.
16 ATTORNEY McLENDON: You have to do it at --
17 to amend it, you have to have it adopted at two
18 regular meetings, so we have to have two meetings
19 where we adopt the same language. They have to be at
20 least 70 days apart and there is --
21 ATTORNEY FELGIN: It's 7 days.
22 COUNCILMEMBER PATRICK: 7 days.
23 ATTORNEY McLENDON: I'm sorry. 7 days
24 apart.
25 And you're exactly right, it must be

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1 advertised once a week for three weeks 60 days prior
2 to the final adoption date. So yes, that entire
3 process has to be gone through every time you want to
4 amend your Charter via Home Rule.
5 COUNCILMEMBER FLEMING: And I have nothing
6 on page 3.
7 MAYOR PITTMAN: Okay. Page 4.
8 COUNCILMEMBER PATRICK: If I can interject,
9 I just have a quick question. On page 2, it
10 specifically calls out the Dekalb Champion.
11 Does it have to be the Champion? Why
12 couldn't it be the AJC? That's a paper of general --
13 ATTORNEY McLENDON: That's our legal organ.
14 COUNCILMEMBER ALEXANDER: It's State law.
15 COUNCILMEMBER PATRICK: The legal organ
16 itself.
17 COUNCILMEMBER PACHUTA: Legal organs, uh-
18 huh.
19 COUNCILMEMBER ALEXANDER: The State picks
20 them, the legal organs of all the counties.
21 COUNCILMEMBER PATRICK: Okay.
22 MAYOR PITTMAN: We've tried before.
23 COUNCILMEMBER PATRICK: Okay.
24 MS. LISA FERGUSON: Much more expensive to
25 advertise in the AJC.

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1 MAYOR PITTMAN: Okay. We'll move to page 4.
2 Anyone?
3 COUNCILMEMBER FLEMING: Yes. One second
4 here. Section 2.03, you have -- and when I say "you,"
5 whomever did this -- has gone (a) through (h) in this
6 section, but there was a (b)(1) and (2) in the
7 original Charter that states that before your term of
8 office beginning January 1, 2012, the office of Mayor
9 shall be a full-time position for the first two years
10 of such term of office until December 31st, 2013.
11 From January 1, 2014, through the end of
12 such term of office, the office of Mayor shall be a
13 part-time position. Thereafter, the office of Mayor
14 shall be a part-time position.
15 Item 2.03 (b) (2), and then it was the
16 qualifying fee for the term of the office of Mayor
17 beginning January, 2012, shall be paid pursuant to
18 Code Section 21-2-131 of the O.C.G.A. for a full-time
19 position. The qualifying fee for the term of office
20 of Mayor beginning January 1, 2016, shall be
21 calculated on the basis of a part-time position in
22 accordance with Code Section 21-2-131 of the O.G.G.A.
23 ATTORNEY McLENDON: And if I'm correct, in
24 this, we are only modifying Subsection (a).
25 COUNCILMEMBER FLEMING: Yes, but you've

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1 given it --
2 ATTORNEY McLENDON: I think we need to --
3 COUNCILMEMBER FLEMING: You've given it (a)
4 through (h) --
5 ATTORNEY McLENDON: Right. This --
6 COUNCILMEMBER FLEMING: -- and we already
7 had a (b).
8 ATTORNEY McLENDON: That's right. This
9 language is meant to be inserted as just subsection
10 (a) and not changing (b) and (c). So we may need to
11 do some rewording or recalculation of the format on
12 this.
13 COUNCILMEMBER FLEMING: Okay.
14 ATTORNEY McLENDON: But this is intended to
15 only substitute for Subsection (a).
16 COUNCILMEMBER FLEMING: All righty. So in
17 the (b) section of the 2.03 (b) (1) and (2) --
18 ATTORNEY McLENDON: Uh-huh.
19 COUNCILMEMBER FLEMING: -- those will
20 remain.
21 ATTORNEY McLENDON: Uh-huh.
22 COUNCILMEMBER FLEMING: Okay.
23 COUNCILMEMBER DEAN: Okay. With (f), "Make
24 all appointments of City Officers as provided by this
25 Charter subject to confirmation by the City Council,"

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1 why is this in here? Why would this happen by the
2 Mayor rather than the city manager?
3 COUNCILMEMBER BATES: On that, that actually
4 -- I think that conflicts with page 7, number (1).
5 COUNCILMEMBER FLEMING: Is this not -- in
6 questioning Ms. Dean, isn't this where the part-time
7 Mayor would swear someone in? Isn't that the appoint-
8 ment of City officers they're referring to here?
9 ATTORNEY McLENDON: It's a common -- this is
10 not an unusual construct, and frankly, most places
11 I've looked will have this -- for instance, the city
12 attorney, for one position. A lot of times, they will
13 have the Mayor sort of selects that person but then it
14 has to -- it is subject to confirmation by Council.
15 And that's for the officers. Not unusual. That is in
16 several cities I've worked in.
17 COUNCILMEMBER DEAN: Can we remove this or
18 change it?
19 ATTORNEY McLENDON: You can have a different
20 structure of doing that, but it is something that --
21 COUNCILMEMBER DEAN: I mean the city manager
22 would be responsible for hiring everyone, for example,
23 with the exception of the city attorney and there were
24 a couple of others.
25 ATTORNEY McLENDON: And this is referring to

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1 those appointed offices. This isn't referring to
2 the --
3 COUNCILMEMBER BATES: But the language --
4 ATTORNEY McLENDON: -- your planning
5 director.
6 COUNCILMEMBER BATES: But the language is
7 the same for the city manager which is --
8 MAYOR PITTMAN: Look at one.
9 COUNCILMEMBER BATES: -- which is 2.07A (1),
10 it says, "Appoint and, when necessary for the good of
11 the City, suspend or remove all officers . . .
12 ATTORNEY FELGIN: Subject to this Charter.
13 COUNCILMEMBER BATES: So it's using the same
14 terminology of "officers."
15 COUNCILMEMBER DEAN: And we have a very con-
16 fusing kind of contradicting Charter.
17 ATTORNEY FELGIN: Well, specifically if page
18 7 is what you're referring to, specifically when it
19 says "subject to this Charter," it means with the
20 exception of a position that is specifically stated in
21 the previous section that I've amended.
22 COUNCILMEMBER BATES: But, then, doesn't
23 2.03 (f) need to say, "Make all appointments," and
24 then put those three exceptions in there?
25 ATTORNEY McLENDON: Let me think for a

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1 second. I want to read both of these code sections.
2 The way this should work -- and I'm hearing
3 the commentary on this, and I think it can be
4 construed to function. But it might be something
5 that's worth looking at, but let me tell you the
6 general picture of how it --
7 COUNCILMEMBER DEAN: Okay. Well, wait.
8 Because if it can be construed one way, we want to
9 avoid any ambiguity in the language, right?
10 ATTORNEY McLENDON: That's what -- that's
11 the second part of my statement.
12 COUNCILMEMBER DEAN: Okay.
13 ATTORNEY McLENDON: So the first part's
14 going to be how I think we're all saying it should
15 work, and that may be open for discussion.
16 The second part of the conversation will be
17 I have to go back and work on this and try to clarify
18 that, so let me make sure I have the understanding
19 correct.
20 It is not unusual and actually it is typical
21 that sort of the way they deal with the appointment of
22 the named officers in the Charter is the Mayor
23 appoints -- the Mayor nominates and the Council
24 appoints, and that's --
25 COUNCILMEMBER DEAN: This is for a

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1 ceremonial mayor?
 2 ATTORNEY McLENDON: Any mayor. Yeah, a
 3 mayor that's in a typical city manager form of
 4 government. I've seen it. That's typically the way
 5 you see it. Because what happens is the tension
 6 that's kept is the Mayor is in charge of the
 7 nominating process but that nomination has to be
 8 something that gets through the Council for it to all
 9 move forward. So that's for the city attorney, clerk,
 10 any other named officers.
 11 And I think I can probably improve that
 12 language under the city manager, because you make a
 13 point, because it's trying to do what we're saying.
 14 What it's saying is, you know, but for this group --
 15 and actually, the judges are included there -- and
 16 what it's saying is except for everybody that the
 17 Mayor appoints and the Council -- or the Mayor
 18 nominates and the Council approves, the city manager
 19 has day-to-day hiring and firing.
 20 So that all being said, that's how I'm
 21 reading this, everybody's on board to go forward. And
 22 if that's what everybody is telling me to do, I can
 23 fix that, because what I'll do is clarify probably the
 24 first language and you can bring it in consistent with
 25 the second language.

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1 COUNCILMEMBER BATES: I'm okay with that as
 2 long as we're consistent on both sides, because, as it
 3 reads right now, the Mayor under the new Charter has
 4 the ability to appoint everybody but the city manager
 5 also has the ability to appoint everybody with the
 6 exception of those exceptions, and I just want to make
 7 sure that both sections are very clear as to what
 8 appointments with Council approval the Mayor has
 9 versus what appointment the city manager has.
 10 ATTORNEY McLENDON: The standard operating
 11 procedure on that is it's a -- you know, for
 12 everything that's not sort of hiring an employee, for
 13 things like we said. Some of the other areas you do
 14 get into are the judges; you'll get into if you-all
 15 set up a commission or committee, something like that.
 16 Those will usually all sort of filter through
 17 this Mayor nominates/Council approves. And what
 18 happens is because of that, it ends up being a
 19 cooperative process because, you know, at some point,
 20 everybody talks and says, well, you know, we got to
 21 get it through the process.
 22 So that's the typical way to do it, and if
 23 y'all are good, I can make these two come together
 24 where that's what it will say very clearly.
 25 MAYOR PITTMAN: Yes, Lenny.

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1 ATTORNEY McLENDON: Go ahead.
 2 ATTORNEY FELGIN: I interject the provision
 3 later on that you will see where it talks about city
 4 clerk, city attorney. Actually, city attorney already
 5 says that. City clerk, finance director, those
 6 specific provisions for those state specifically the
 7 Mayor appoints and the Council approves.
 8 So with this specific provision 2.03 you
 9 refer to, it says, Make all appointments of . . .
 10 Officers as provided by this Charter, the Charter
 11 itself would say that those particular officers --
 12 city clerk and finance director, those chartered
 13 officers are subject the appointment of the Mayor and
 14 confirmation of the City Council.
 15 COUNCILMEMBER BATES: Then, I just want to
 16 make sure that there in the Charter where it outlines
 17 what the Charter Offices are so that there's --
 18 ATTORNEY FELGIN: It does.
 19 COUNCILMEMBER BATES: Okay.
 20 ATTORNEY McLENDON: Let me -- let me, you
 21 know --
 22 COUNCILMEMBER ALEXANDER: There's no problem
 23 with stating the same thing twice.
 24 ATTORNEY McLENDON: Let me work on it.
 25 COUNCILMEMBER ALEXANDER: Okay.

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1 ATTORNEY McLENDON: Because we can tie that
 2 down, and I think it sounds like everybody would like
 3 that to be very clear.
 4 And the last thing I want is ambiguity later
 5 that --
 6 MAYOR PITTMAN: Please.
 7 ATTORNEY McLENDON: -- whoever's in this
 8 chair has to go figure out. I'm --
 9 COUNCILMEMBER BATES: Because we're --
 10 ATTORNEY McLENDON: -- all for not --
 11 MAYOR PITTMAN: Yes.
 12 ATTORNEY McLENDON: -- having that.
 13 COUNCILMEMBER BATES: Because we're replete
 14 with ambiguity.
 15 ATTORNEY McLENDON: Well, let's get rid of
 16 it and then if that's got y'all saying Cecil, I'm
 17 happy to go back and revisit it.
 18 COUNCILMEMBER FLEMING: And on that same
 19 page, there's lowercase and uppercase in the first
 20 letter so just make a decision as to what you're going
 21 to use.
 22 COUNCILMEMBER BATES: The sentence --
 23 COUNCILMEMBER FLEMING: No. I mean the (a)
 24 through (h), some of them are caps -- the first letter
 25 cap, some of them are lowercase, so I just want us to

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1 be consistent and look pretty.
2 ATTORNEY McLENDON: (f) and (g) need to be
3 lowercase.
4 COUNCILMEMBER FLEMING: And then on page 5,
5 I realize that most governmental situations are listed
6 as a male scenario, but are we going to stick to "his
7 absence," "the Mayor during his absence?"
8 ATTORNEY FELGIN: That's up to you all. You
9 can say hers or his or --
10 COUNCILMEMBER DEAN: His or hers?
11 ATTORNEY FELGIN: -- his and hers.
12 COUNCILMEMBER BATES: Isn't there a general
13 neutral "their?"
14 COUNCILMEMBER DEAN: No. It's his or her if
15 you're talking about --
16 ATTORNEY FELGIN: Mayor is usually -- well,
17 I wouldn't want to create a confusion of plurality.
18 COUNCILMEMBER BATES: His or her.
19 COUNCILMEMBER FLEMING: So there's two
20 errors, two corrections at the top of page 5.
21 MAYOR PITTMAN: Okay.
22 COUNCILMEMBER PATRICK: Since we've kind of
23 jumped around a bit, a question that I've had, I've
24 talked to Lenny but I wanted to hear my colleagues'
25 opinion on this.

Page 22

1 Currently it says that the city clerk will
2 be respon- -- or the Council will appoint the city
3 clerk. And I would like to suggest that perhaps that
4 authority goes under the city manager simply because
5 we've had difficulty filling that position, and I kind
6 of think that the credibility of a city manager may
7 come and help us fill that position faster.
8 COUNCILMEMBER BATES: Yeah. I was going to
9 ask that question when we got to 7, but since we're
10 kind of talking about that, why is the clerk spelled
11 out as appointed by the Mayor versus the city manager?
12 ATTORNEY McLENDON: If I'm correct, it's the
13 way our Charter calls out that is an appointment so
14 that a specially named position is the way it's
15 currently set up.
16 COUNCILMEMBER DEAN: But we're changing the
17 Charter now, right? That's what this --
18 ATTORNEY McLENDON: That's why --
19 COUNCILMEMBER DEAN: -- is about?
20 ATTORNEY McLENDON: -- we're here talking.
21 COUNCILMEMBER DEAN: Okay.
22 ATTORNEY McLENDON: So you know, when you're
23 asking, "Why is it that way?", I think we probably
24 continued the named position.
25 MAYOR PITTMAN: I think Robert's got a good

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1 point, though. I think it would be better served
2 coming from the city manager and pull some of that.
3 COUNCILMEMBER DEAN: Well, especially if
4 it's going to be a full-time city manager and she or
5 he will be --
6 ATTORNEY McLENDON: I can think of no reason
7 why we couldn't change that if we wanted to.
8 COUNCILMEMBER FLEMING: I also had that
9 highlighted, and that is page 5, item number (1) that
10 we're referring to?
11 COUNCILMEMBER BATES: Yeah. That would be
12 my preference is to change that and have the city
13 manager hire their own clerk.
14 ATTORNEY FELGIN: You said page 6 or page
15 11?
16 COUNCILMEMBER FLEMING: I had on page 6 of 6
17 and then we kept going to 26 or 27.
18 On page 6 of 6, item --
19 MAYOR PITTMAN: Well, wait. Are we through
20 with 5? Is everybody through with 5?
21 COUNCILMEMBER FLEMING: Well, what they were
22 discussing was except the city manager --
23 MAYOR PITTMAN: Right.
24 COUNCILMEMBER FLEMING: -- except the city
25 clerk. And I'm just making comment that that was on

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1 page 6 is what I'm showing --
2 MAYOR PITTMAN: Okay.
3 COUNCILMEMBER FLEMING: -- under Section
4 2.07A.
5 ATTORNEY McLENDON: Clerks are usually in
6 the Charter.
7 ATTORNEY FELGIN: It's on page 11.
8 ATTORNEY McLENDON: No. And I'm looking at
9 it. It's in the Charter. I have no problem doing
10 whatever we need to do.
11 Let me just make sure there is no conflict
12 develops because of that, so I can't think of any
13 reason you can't have that named by the city manager,
14 but it seems like every charter I've ever seen does
15 that.
16 So let me make the change with me reserving
17 the caveat of let me also make sure I'm not doing
18 something that's problematic.
19 COUNCILMEMBER PATRICK: Just for a bit of
20 background, I talked with the city clerk where I work
21 at and she expressed that there is a preference that
22 kind of removes her from the politics that goes on
23 with us, and she has one supervisor that she answers
24 to which is the city manager. Again, for that
25 efficiency of governance, I think that --

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1 ATTORNEY McLENDON: Yeah. I'm having to do
2 it -- I just -- again, let me make sure I'm not
3 causing --
4 COUNCILMEMBER PATRICK: Thank you.
5 ATTORNEY McLENDON: -- a problem with it,
6 but I don't know of any reason why it would be.
7 COUNCILMEMBER BATES: To me, just percep-
8 tionwise, if you appoint them, they report to you.
9 COUNCILMEMBER PATRICK: Yeah. Yeah.
10 COUNCILMEMBER BATES: And I just think that
11 that's a bad precedent to get in right now with us.
12 ATTORNEY FELGIN: Would you want it subject
13 to your confirmation?
14 COUNCILMEMBER PATRICK: I think that would
15 be appropriate as in the city manager selects and then
16 we say great.
17 ATTORNEY McLENDON: So we're going to take
18 this and let me just talk through it with you.
19 This is going to become a totally adminis-
20 trative function of the City. So when the city clerk
21 comes up, the manager will interview, come up make the
22 selection, come in and say, "Guys, this is who I think
23 is the right person for the city clerk," and then
24 everybody meets them and greets them; okay, great.
25 COUNCILMEMBER PATRICK: That's my under-

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1 standing.
2 COUNCILMEMBER DEAN: Well, he or she will be
3 working for that city manager, so that's --
4 ATTORNEY McLENDON: I'm good with it. I'm
5 just sort of talking it through as we're dealing with
6 this. So let me go and it'll help me get this
7 document back in a better format for you-all.
8 COUNCILMEMBER FLEMING: So it would -- if
9 I'm reading correctly, on page 6, instead of "Nayor
10 and Council had been heretofore empowered to appoint
11 and discharge, except the City Clerk, City Attorney,
12 the outside auditor, and municipal judges," we are
13 deleting the "except the City Clerk."
14 ATTORNEY FELGIN: That is correct.
15 COUNCILMEMBER FLEMING: Okay.
16 MAYOR PITTMAN: Okay. Page 6. Right? Go
17 back?
18 COUNCILMEMBER FLEMING: We need to go back
19 to 5. The reason we need to go back to 5, because we
20 started on the City Clerk thing.
21 COUNCILMEMBER PATRICK: My apologies.
22 COUNCILMEMBER FLEMING: That's okay. That's
23 okay. You were doing fine.
24 MAYOR PITTMAN: Ms. Alexander, anything on
25 5?

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1 COUNCILMEMBER ALEXANDER: I don't have
2 anything that's on 5.
3 MAYOR PITTMAN: Mr. Patrick, anything else?
4 COUNCILMEMBER PATRICK: No.
5 MAYOR PITTMAN: Ms. Fleming?
6 COUNCILMEMBER FLEMING: Yes. Page 5, 2.07,
7 Compensation and Expenses, there are blanks there,
8 number one, and number two, if I'm not mistaken, the
9 salary of the full-time Mayor is in our Charter and
10 Home Rule prohibits nine areas and one of them is
11 salaries --
12 ATTORNEY McLENDON: And I'm --
13 COUNCILMEMBER FLEMING: -- to be done by
14 Home Rule. And so even though we are saying that the
15 Mayor shall receive a salary "as fixed by ordinance
16 ordinance . . . of the City Council after a public
17 hearing" -- and I don't have a problem with that, but
18 you're leaving the full-time Mayor at \$70,000 in the
19 Charter if that's what -- if that is what you're
20 doing.
21 COUNCILMEMBER BATES: In my ver- --
22 COUNCILMEMBER FLEMING: I just want to touch
23 on that first.
24 COUNCILMEMBER BATES: In my version, it's
25 stricken.

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1 COUNCILMEMBER FLEMING: What?
2 COUNCILMEMBER BATES: That the \$70,000 is
3 stricken.
4 MAYOR PITTMAN: Mine too.
5 COUNCILMEMBER FLEMING: What? In 2.07?
6 COUNCILMEMBER BATES: Yeah.
7 COUNCILMEMBER PATRICK: Yeah.
8 MAYOR PITTMAN: Right here.
9 COUNCILMEMBER FLEMING: That's --
10 COUNCILMEMBER PATRICK: I've got it stricken
11 here and then I've got --
12 COUNCILMEMBER FLEMING: Oh, right. It says
13 delete it. Right.
14 Well, you can't do that. Sorry.
15 ATTORNEY McLENDON: A couple of things.
16 And I see this document. It's my under-
17 standing --
18 COUNCILMEMBER BATES: What document are you
19 referring to?
20 ATTORNEY McLENDON: Just the -- it's a --
21 it's the Georgia Encyclopedia. And they are
22 referencing that, absolutely.
23 MAYOR PITTMAN: Ms. Fleming pointed that
24 out.
25 ATTORNEY McLENDON: But they don't give me a

1 Code section reference.

2 What I'd like to do -- and I've reviewed
3 that pretty closely and I've seen that many times
4 modified by Home Rule.

5 COUNCILMEMBER FLEMING: 36-35-1.

6 ATTORNEY McLENDON: Yeah. But the Code
7 section that talks about you're unable to modify any
8 salaries via Home Rule, I don't see that in Georgia
9 law.

10 That being said, I'm happy to revisit that
11 issue and I will double-check it, but I think that
12 under Home Rule you can.

13 COUNCILMEMBER DEAN: Well, this says --
14 because I brought this issue up a number of times
15 about having it removed from the Charter, and now time
16 is coming to an end. And if we don't do it now, then
17 it's going to be another year before we can do it. So
18 can you please look into that as quickly as possible?

19 ATTORNEY McLENDON: Absolutely. I'm pretty
20 sure I'm correct on that but I will be glad to revisit
21 this doc-- -- I mean these guys obviously disagree with
22 me, and I'll be glad to research that.

23 They didn't cite me to a Code section, so
24 let me --

25 COUNCILMEMBER BATES: If by chance you are

1 ready to put dollar figures in there.

2 COUNCILMEMBER BATES: Well, let's -- let's
3 take this one at a time. And correct me if I'm wrong,
4 but my understanding is that if we are to remove the
5 compensation from the Charter and the dollars get
6 fixed by ordinance, if we were to then modify that
7 ordinance and increase or reduce the pay, it wouldn't
8 take effect until the next election cycle.

9 ATTORNEY McLENDON: Only the increase.

10 COUNCILMEMBER BATES: Okay. So a decrease
11 could be taking effect immediately but any increases
12 wouldn't take effect until the next election cycle
13 whether it's by Charter or by ordinance.

14 ATTORNEY McLENDON: That is correct.

15 COUNCILMEMBER BATES: Okay. So following
16 Ms. Fleming's reasoning, if we take it out of the
17 Charter, there is the potential for this Council or
18 the next Council to, the very next day because it's
19 much easier, give ourselves a \$10,000-a-year raise,
20 taking us to \$18,000. That wouldn't take effect until
21 the next Council gets sworn in. Is that correct?

22 ATTORNEY McLENDON: The difference -- the
23 difference -- and I will research this issue to make
24 sure it could be changed by the Home Rule, which I
25 think it can.

1 not correct and this does need to be done legisla-
2 tively, can we concurrently prep language to get to
3 our representatives?

4 ATTORNEY McLENDON: I will have an answer to
5 that to you tomorrow, definitively. I will give a
6 written answer e-mailed to everyone backing it up with
7 my citation of the case law so we can all be on
8 the same page.

9 But yeah, if we needed to put that together
10 to go to the legislature, it's a very short document.

11 COUNCILMEMBER BATES: Great. Thank you.

12 COUNCILMEMBER FLEMING: Mr. Bates, I
13 appreciate that, and I see problems both ways.

14 Number one, putting -- I realize that we
15 need to correct the salary that's in there. But
16 deleting it in its entirety, to me, it's a safeguard
17 by putting the salary in the Charter, because then it
18 forces us not to take advantage or not to delete it at
19 any time by ordinance and also it has to be done by
20 legislative action.

21 And so it's a safeguard. I mean I know the
22 ramifications, the pros and the cons of it. But it's
23 there, so we need to make a decision on it. So I'm
24 not in favor of removing; I'm in favor of correcting.

25 But then the balance of 2.07, we're getting

1 The big difference between it is the 60-day
2 advertising-in-the-newspaper/two-consecutive-meeting
3 process versus your ordinance process, which is less
4 strenuous, you know: You put it on an agenda and have
5 two readings and you can pass it, so --

6 COUNCILMEMBER BATES: But the pay increase
7 wouldn't take effect until the next Council gets sworn
8 in.

9 ATTORNEY McLENDON: That is absolutely
10 correct. Under neither scenario would that increase
11 happen until the next election.

12 COUNCILMEMBER BATES: So just to be clear, I
13 wanted to make sure if we do this February 1st, we
14 vote to make the Council pay \$50,000, that will take
15 effect January 1 of 2014.

16 ATTORNEY McLENDON: After the next election
17 cycle.

18 COUNCILMEMBER BATES: Okay. Thank you.

19 COUNCILMEMBER PATRICK: Just following up
20 what Brian was saying, though, that only takes a
21 regular notice of a Mayor-and-Council session versus
22 going through this elaborate process of public
23 meetings and public notices.

24 ATTORNEY McLENDON: Dependent upon which way
25 y'all decide to have the Charter. If you put the

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1 dollar amount in the Charter, you will go through the
 2 Home Rule Act. If it is not in the Charter and it
 3 says this language "as set forth by ordinance," you
 4 have to go through the ordinance process. Under
 5 either scenario if you were increasing the salary,
 6 there is no increase until following the next election
 7 cycle.
 8 COUNCILMEMBER PATRICK: All right. That's
 9 clear.
 10 MAYOR PITTMAN: Anything else?
 11 COUNCILMEMBER FLEMING: Now, you indicated
 12 that it's not listing the Home Rule, and for whatever
 13 reason I can't bring it up. I'm having trouble with
 14 my computer. States that it's O.C.G.A. 36-35-1, the
 15 Municipal Home Rule Act of 1965, O.C.G.A. 35-35-1,
 16 and for whatever reason, I can't bring it up.
 17 ATTORNEY McLENDON: And that's the citation
 18 to the Home Rule Act, the whole thing. You cite it by
 19 citing Section 1 in it, the typical location.
 20 COUNCILMEMBER FLEMING: Which I'd love to
 21 read, but that's what I'm saying: I can't bring it up
 22 on my computer right now.
 23 ATTORNEY McLENDON: The section that talks
 24 about the primary limitations, and I just actually
 25 happen to have it.

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1 ATTORNEY FELGIN: (Presenting)
 2 ATTORNEY McLENDON: Well, yeah, I guess that
 3 solves it. Under O.C.G.A -- and I'll get this to you--
 4 all tomorrow, everybody, in an e-mail citing the Code
 5 section.
 6 It states, (Reading) 36-35-4, Salary of
 7 Municipal Employees, How Fixed. The governing
 8 authority of each municipal corporation is authorized
 9 to fix the salary, compensation, expenses of its
 10 municipal employees and the members of its municipal
 11 governing authority and to provide insurance,
 12 retirement, pension benefits covered under that.
 13 So that's probably the Code Section which is
 14 35 -- I'm sorry -- 36-35-4(a) that does provide that
 15 ability, and that's always what I've always under-
 16 stood, too.
 17 COUNCILMEMBER FLEMING: Are you sure that
 18 doesn't say except salaries?
 19 ATTORNEY McLENDON: The first word is
 20 salaries. It says, is authorized to fix the salary,
 21 compensation and expenses of its municipal employees
 22 and the members of its municipal governing authority
 23 and to provide basically benefits.
 24 And then that is where it says -- Subsection
 25 (b) says: Any such increase shall not be effective

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1 until after the taking of office of those elected at
 2 the next regular municipal election which is
 3 immediately following the day on which the action to
 4 increase the compensation is taken.
 5 I will send this to everyone. We will send
 6 this language to everyone.
 7 COUNCILMEMBER BATES: So your interpretation
 8 -- I guess the clarification would be that doesn't say
 9 it has to be fixed in the Charter. It's silent on
 10 whether it has to be in the Charter or by ordinance.
 11 ATTORNEY McLENDON: Uh-huh. I see nothing
 12 that says it has to be in the Charter. That's a
 13 policy decision about whether you want to require the
 14 advance-notice-and-hearing process or just your
 15 ordinance notice-and-hearing process. Either way,
 16 there is an ironclad no interpretation necessary in
 17 State law that says it's not effective until after the
 18 next election.
 19 MAYOR PITTMAN: Ms. Dean?
 20 Ms. Fleming, did you have anything else?
 21 COUNCILMEMBER FLEMING: Are we still working
 22 on page 5?
 23 MAYOR PITTMAN: Yes, ma'am.
 24 COUNCILMEMBER FLEMING: Well, we need to
 25 discuss these expenses that we've got listed here as a

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1 blank.
 2 First of all, I'm not even sure why we're
 3 putting now moneys into the Charter when we're trying
 4 to get the moneys out of the Charter. You know, I'm
 5 real confused about this.
 6 COUNCILMEMBER BATES: I'm with you. I had
 7 that as a question as to why we were adding in this
 8 expense piece.
 9 ATTORNEY McLENDON: Here's where I think we
 10 are on that. In the existing Section 2.07, it talks
 11 about -- this is the language from our Charter that
 12 says reimbursement the necessary expenses but there's
 13 no cap on it, and I think that is what they -- that
 14 language as written that said yeah, reimburse my
 15 necessary expenses. This is just an attempt to come
 16 in and say, there ought to be some limitation on that
 17 if you're going to leave it in there.
 18 COUNCILMEMBER DEAN: Well, and some defi-
 19 nition of that in terms of what expenses are -- are --
 20 COUNCILMEMBER PATRICK: Necessary.
 21 COUNCILMEMBER DEAN: Yes.
 22 ATTORNEY McLENDON: And I don't think
 23 anybody uses that particularly, but it is sort of a
 24 gaping hole in --
 25 COUNCILMEMBER BATES: But --

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1 ATTORNEY McLENDON: -- the existing
2 language.
3 COUNCILMEMBER DEAN: So can't we just delete
4 it?
5 COUNCILMEMBER BATES: Couldn't you cap it by
6 ordinance? I mean if you're going to set salaries by
7 ordinance, couldn't you cap the expenditures by
8 ordinance?
9 ATTORNEY McLENDON: You could.
10 COUNCILMEMBER BATES: My preference would be
11 if you're going to pull money out of the Charter,
12 let's pull all of the money out and not get squirrely
13 on --
14 ATTORNEY McLENDON: And this is expenses
15 because really it says --
16 COUNCILMEMBER FLEMING: Well, see, we've got
17 a safeguard in it because it says "Each
18 Councilmember," or the Mayor, for that matter, "when
19 authorized by the Council and upon the presentation of
20 itemized vouchers, shall receive their actual and
21 necessary expenses incurred in the performance of
22 their duties of office."
23 So I mean that's fine, but just forget the
24 "up to and including" blah-blah-blah per year.
25 COUNCILMEMBER DEAN: Well, I mean that's the

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1 cap that you were talking about; right?
2 ATTORNEY McLENDON: It's just -- the
3 "authorized by Council," the reason that got put in is
4 it sounded a little loose. And it's for both,
5 frankly. The Mayor and the Council, you know, both
6 have the ability to come in and present expenses, and
7 there is an authorization. That's not bad, but, you
8 know, I think the thought was just put a cap on it.
9 COUNCILMEMBER ALEXANDER: Because how would
10 you budget for it?
11 ATTORNEY McLENDON: Hm?
12 COUNCILMEMBER ALEXANDER: How would you
13 budget for it?
14 MAYOR PITTMAN: Well --
15 ATTORNEY McLENDON: If you didn't put a
16 cap --
17 COUNCILMEMBER ALEXANDER: You would be
18 budgeting an unknown if you didn't put a cap on it.
19 MAYOR PITTMAN: In speaking to all the part-
20 time mayors, they do have a cap either per month or
21 per year, like the Chamblee mayor's expenses is five
22 hundred per month. Some of them have five thousand
23 per year. So there is, so they work it into the
24 budget.
25 COUNCILMEMBER FLEMING: But I agree with Mr.

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1 Bates: we could do it by ordinance and not put it in
2 this.
3 MAYOR PITTMAN: No, I agree with that.
4 ATTORNEY McLENDON: I was going to say all
5 those concepts equal, we could put them both into, you
6 know, expenses shall be reimbursed, you know, in an
7 amount not to exceed as authorized by ordinance.
8 MAYOR PITTMAN: Yeah.
9 COUNCILMEMBER BATES: I want to go back real
10 quick to the salary piece because I've had a note
11 here, and I'm on -- my page number is a apparently a
12 little bit different than Ms. Fleming's.
13 You're adding in that the salaries as fixed
14 by ordinance of the Mayor and City Council after
15 public hearing. So the changing of salary wouldn't be
16 a regular one-two meeting. You'd have to have a
17 public hearing --
18 ATTORNEY McLENDON: It would --
19 COUNCILMEMBER BATES: -- to change the com-
20 pensation.
21 ATTORNEY McLENDON: It would still be an
22 ordinance.
23 COUNCILMEMBER BATES: Right.
24 ATTORNEY McLENDON: So you would end up with
25 a first and second reading but there would be a

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1 requirement for a public hearing.
2 COUNCILMEMBER BATES: Right. So you
3 couldn't do a waive-the-first-reading and pass it in
4 one meeting without having at least some extra steps
5 in there.
6 ATTORNEY McLENDON: You can have the public
7 hearing at your first meeting and then probably waive
8 first reading and pass it at that meeting. I see no
9 reason you couldn't do that.
10 It's just this is saying this isn't a normal
11 ordinance; this one requires a public hearing.
12 COUNCILMEMBER BATES: Because I do want
13 protections in there, but. So the requirement for a
14 public hearing, I liked, and I have that noted here
15 that that was a good thing.
16 ATTORNEY McLENDON: That section, what I'm
17 going to do is we're going to put it together so not
18 only -- and just hearing what I'm hearing, so tell me
19 if I'm right: The salaries fixed by ordinance, and
20 that same -- mirror that same language to say the
21 expenses would be capped as set forth by ordinance.
22 And this'll be just another draft again to
23 make sure I hit where you-all want.
24 MAYOR PITTMAN: Ms. Fleming, anything else?
25 COUNCILMEMBER FLEMING: I'm through with

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1 page 5.
 2 MAYOR PITTMAN: Okay. Ms. Dean?
 3 COUNCILMEMBER DEAN: I'm good.
 4 MAYOR PITTMAN: Okay. Now we're moving to
 5 page 6. Ms. Alexander?
 6 COUNCILMEMBER ALEXANDER: I don't have any-
 7 thing.
 8 MAYOR PITTMAN: Mr. Bates?
 9 COUNCILMEMBER BATES: No.
 10 MAYOR PITTMAN: Mr. Patrick?
 11 COUNCILMEMBER PATRICK: No.
 12 MAYOR PITTMAN: Ms. Fleming?
 13 COUNCILMEMBER FLEMING: We took care of it.
 14 MAYOR PITTMAN: Ms. Dean?
 15 COUNCILMEMBER DEAN: No.
 16 MAYOR PITTMAN: Okay, page 7.
 17 COUNCILMEMBER ALEXANDER: No.
 18 MAYOR PITTMAN: Mr. Bates?
 19 COUNCILMEMBER BATES: We've already
 20 addressed the two that I had.
 21 MAYOR PITTMAN: Okay. Anybody?
 22 COUNCILMEMBER PATRICK: No, I'm good.
 23 MAYOR PITTMAN: Page 8. Ms. Alexander?
 24 COUNCILMEMBER ALEXANDER: My page 8 and 9.
 25 Section 12, I just wanted a little bit more clarifi-

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1 cation on that because does that allow Council the
 2 decision to give merit pay raises?
 3 ATTORNEY McLENDON: What that's doing is
 4 saying that part of the city manager's duties will be
 5 to establish both your org. chart and pay ranges, and
 6 it's sort of saying this is -- this is how we will
 7 govern employee salaries is we create the ranges and
 8 you will not deviate from those. So it is -- it's a
 9 structuring of the organization and salaries.
 10 I think it's good language. I'm not sure
 11 I've seen it in every charter I've ever looked at,
 12 but, you know, it definitely creates a -- you know, a
 13 conforming organization that will assist you in making
 14 sure you sort of keep your merit across the board fair
 15 and this kind of thing.
 16 COUNCILMEMBER ALEXANDER: What about
 17 revision for discipline and the ability to reduce
 18 someone's salary?
 19 ATTORNEY McLENDON: It would do both. It
 20 would serve as a range for positions. So if you ended
 21 up with, you know, the range, if you are holding that
 22 job title, you would be constrained by the floor as
 23 well as the ceiling, because how you would do it is
 24 you would have your position chart and then the
 25 description of all the duties in the position chart

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1 and say these duties equal this position, and here is
 2 the pay range for it. So if somebody was meeting
 3 those duties, they would be operating in that pay
 4 range.
 5 You know what? This is not language I've
 6 seen in every charter, and I'm not sure this has to be
 7 in the Charter. I think we can speak -- this was
 8 brought with Mr. Baesinger, and I --
 9 That might be one that's good for him to
 10 address because I have not seen this in charters but I
 11 have seen it in action, just not necessarily called
 12 out in the charter.
 13 COUNCILMEMBER ALEXANDER: Well, I mean
 14 that's one of -- I think that's one of -- I know
 15 Councilman Bates has been working on that since '07
 16 and that's something that I think we need is a pay
 17 scale and ranges and all.
 18 But the language confused me, because I'm
 19 like, Wait a minute. Is it saying that once you're in
 20 there, I have no flexibility? I mean we can't -- we
 21 can't adjust your salary; you are in scale, buddy, and
 22 that's it?
 23 ATTORNEY FELGIN: Until you adjust the pay
 24 ranges.
 25 ATTORNEY McLENDON: You would adjust either

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1 the pay range or you would move them into different
 2 duties. And that's why you would think real carefully
 3 about setting those ranges.
 4 COUNCILMEMBER FLEMING: We --
 5 ATTORNEY McLENDON: That's how I've seen it.
 6 I'm sorry.
 7 COUNCILMEMBER FLEMING: That's all right.
 8 I just want to agree with Ms. Alexander. I
 9 had 12 definitely highlighted big-time because many of
 10 our employees are underpaid right now, and if we go
 11 and put today's dollar figure on commensurate of
 12 duties, we would have already filed bankruptcy.
 13 ATTORNEY McLENDON: Let me --
 14 COUNCILMEMBER FLEMING: So I really do -- I
 15 really feel that -- I think this is a goal this person
 16 should be doing, but I don't think that we should be
 17 restricted to adhering -- as soon as it's put into
 18 place, adhering to it, I think, because this is part
 19 of our -- part of what might be a personnel policy or
 20 an amendment to our personnel policy rather than our
 21 Charter.
 22 ATTORNEY McLENDON: That's where I've
 23 actually seen it in the past, and it usually is part
 24 of operating the organization.
 25 Let me talk to Mr. Baesinger because this

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1 was language he had suggested, so, you know, I don't
2 want to -- There may be something he's thinking of
3 that I haven't considered,
4 So I can tell you that I've never seen this
5 in a charter. That doesn't mean it's wrong, doesn't
6 mean it's bad. And if you put it in the Charter,
7 there is zero flexibility, so.
8 COUNCILMEMBER DEAN: Which brings us -- and
9 I'm glad this came up. The personnel policy or the
10 personnel handbook, I mean that's in the Charter;
11 right?
12 COUNCILMEMBER BATES: No, it's an ordinance.
13 ATTORNEY McLENDON: It's in the ordinances.
14 COUNCILMEMBER DEAN: In the ordinance? And
15 is that normal?
16 ATTORNEY McLENDON: Not really, but
17 typically it would be a policy outside of the ordi-
18 nances. I don't know. It's in the ordinances but I
19 don't usually see it in ordinances.
20 MAYOR PITTMAN: It's rare, but it was the
21 opinion of the last legal --
22 ATTORNEY McLENDON: Yeah.
23 MAYOR PITTMAN: -- person.
24 COUNCILMEMBER FLEMING: Because we adopted
25 it by ordinance --

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1 MAYOR PITTMAN: Right.
2 COUNCILMEMBER FLEMING: -- and not by
3 resolution.
4 COUNCILMEMBER DEAN: Well, we might want to
5 think about cleaning it up a little bit sometime in
6 the near future.
7 COUNCILMEMBER FLEMING: Well, we paid a
8 hefty sum to put it in the position that it's in,
9 unfortunately. We paid extra.
10 COUNCILMEMBER BATES: Well, the policies
11 itself aren't bad. It's just we can extract it from
12 the ordinance and put it as a policy instead of having
13 it being an ordinance.
14 ATTORNEY McLENDON: And Lenny pointed out,
15 that would be exactly the kind of thing a city manager
16 would be interested in talking about.
17 COUNCILMEMBER ALEXANDER: As a side note,
18 when we're talking about the benefits. I believe it
19 is in the Charter somewhere -- and this is a Ms.
20 Pachuta note -- about Council receiving health
21 benefits.
22 And we pay for all our benefits. We changed
23 that by motion last June, so that needs to be
24 corrected. It's not in this document.
25 ATTORNEY McLENDON: Okay.

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1 COUNCILMEMBER ALEXANDER: I don't know what
2 the Code section is.
3 ATTORNEY McLENDON: If that's a clean-up, we
4 will find that, and if that needs to be a cleaned, we
5 can get that. This is the perfect time to do it.
6 MAYOR PITTMAN: Mr. Bates?
7 COUNCILMEMBER BATES: I don't have anything
8 on 8.
9 MAYOR PITTMAN: Mr. Patrick?
10 COUNCILMEMBER PATRICK: We're on page 8
11 still?
12 COUNCILMEMBER FLEMING: I think we're on 9.
13 MAYOR PITTMAN: 8, 9, either/or.
14 COUNCILMEMBER FLEMING: Oh, well, no. If
15 we're still on 8, go ahead.
16 COUNCILMEMBER PATRICK: Are you on 8?
17 COUNCILMEMBER FLEMING: No, I'm on 9 now.
18 COUNCILMEMBER PATRICK: I've got a question
19 for 9.
20 COUNCILMEMBER BATES: We're not on 9 on this
21 end of the table. This end of the table's still on 8.
22 MAYOR PITTMAN: 8.
23 COUNCILMEMBER PATRICK: I'm good on 8.
24 MAYOR PITTMAN: Ms. Fleming?
25 COUNCILMEMBER FLEMING: I'm good on 8.

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1 MAYOR PITTMAN: Ms. Dean?
2 COUNCILMEMBER DEAN: I'm good.
3 COUNCILMEMBER FLEMING: I'm ready for 9.
4 MAYOR PITTMAN: Okay. 9, Ms. Alexander?
5 COUNCILMEMBER ALEXANDER: No. My 9 was the
6 question I already asked.
7 COUNCILMEMBER BATES: My 9 is (b).
8 COUNCILMEMBER PATRICK: Yeah.
9 ATTORNEY McLENDON: Policy. Pure policy.
10 It's whatever y'all want.
11 COUNCILMEMBER BATES: I don't even want to
12 even imply that the city manager has to live in the
13 city.
14 MAYOR PITTMAN: I agree.
15 ATTORNEY McLENDON: That one struck me too,
16 but --
17 MAYOR PITTMAN: Yeah.
18 ATTORNEY McLENDON: So out?
19 COUNCILMEMBER BATES: That's my preference.
20 COUNCILMEMBER PATRICK: I agree.
21 COUNCILMEMBER BATES: Because the language
22 there said: but they may reside outside if you let
23 them.
24 COUNCILMEMBER PATRICK: Yeah.
25 MAYOR PITTMAN: Yeah.

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1 COUNCILMEMBER BATES: No. I would prefer
2 them to.

3 ATTORNEY McLENDON: And I will tell you some
4 managers will prefer to as well. I have heard that
5 expressed.

6 COUNCILMEMBER DEAN: He or she could get a
7 good deal on a house.

8 MAYOR PITTMAN: Okay. Mr. Patrick?
9 Anything else, Mr. Bates?

10 COUNCILMEMBER BATES: No. That was my only
11 question on 9.

12 COUNCILMEMBER PATRICK: And that was
13 actually my statement as well, so.

14 MAYOR PITTMAN: Ms. Fleming?

15 COUNCILMEMBER FLEMING: We're still on page
16 9?

17 MAYOR PITTMAN: Yes, ma'am.

18 COUNCILMEMBER FLEMING: Okay. Item number
19 (d). This is a letter filed with the City Clerk. The
20 City Manager is going to designate, subject to
21 approval by the City Council, a qualified city officer
22 or employee to exercise their powers during their
23 temporary absence or disability.

24 And the Council can revoke such designation
25 at any time and appoint another officer of the City to

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1 serve until the City Manager serves, I mean returns.
2 So, you know, we're saying that the city
3 manager's going to designate, and then -- with our
4 stamp of approval, and then all of a sudden we're
5 going to come around and revoke the designation.
6 So I'm just a little bit confused about that. I had a
7 question mark is all I had by that.

8 ATTORNEY McLENDON: The intention of that --
9 when I read that, I thought through it and I was
10 thinking about what is it trying to do. And that
11 language seems like it's okay because it sort of
12 maintains a little power on both sides without getting
13 overly involved, because what happens is the manager
14 says, "You know what? If I go out of town for a week,
15 I permanently designate that whoever is in charge."
16 So the manager takes a vacation and we don't got to
17 have to go through any sort of gyrations about who's
18 in charge.

19 But what the last sentences does is catches
20 a situation where, you know, if you really -- you
21 know, the potential of some turmoil or something where
22 whoever had been designated is not acceptable, it
23 keeps that power in your hands to say, "Nope, sorry.
24 Re-vote. We're giving it to some other person."
25 COUNCILMEMBER BATES: I want to think

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1 through this because I appreciate you bringing this
2 up. Does the letter need to be filed -- When does the
3 letter need to be filed? because let me walk you
4 through the hypothetical that popped into my head:
5 The city manager files a letter designating
6 Employee A as the acting city manager if they're gone,
7 disabled, whatever; which is fine, and we say, yeah,
8 that's great; Employee A is a great person.

9 And then six months down the road, the city
10 manager is disabled for three months, and in between
11 then and now, Employee A has proved to be not the
12 greatest person or is no longer with us. Does that
13 sentence then provide flexibility for us to make some
14 interim changes?

15 ATTORNEY McLENDON: Yeah. What I would say
16 is --

17 COUNCILMEMBER FLEMING: That's the way I
18 took it too.

19 ATTORNEY McLENDON: -- typically your
20 manager would keep up with who they had designated if-
21 I'm-not-here power of attorney to.

22 COUNCILMEMBER BATES: But --

23 ATTORNEY McLENDON: And I think that caveat,
24 that last sentence, gives all sorts of authority to
25 you, the Mayor and Council, to pretty much in whatever

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1 situation -- if y'all weren't satisfied with who was
2 designated and operating, you can immediately say,
3 "You know what?" I mean if you wanted to, you can
4 say, "Call a meeting tomorrow. We're going to get in
5 here and undesignate and designate who we want."
6 COUNCILMEMBER BATES: The only way I see
7 this happening is if there's a longstanding appoint-
8 ment and it's just not been revisited for a period of
9 time.

10 I mean reality is is if they come in and
11 say, "This is who I want to designate because I'm
12 going to be on vacation, you know, in three weeks,"
13 we're not going to in three weeks or whoever's up here
14 is not going to in three weeks say, "Oh, just kidding.
15 We really didn't mean to authorize that," I would
16 hope.

17 ATTORNEY McLENDON: And let me just throw
18 the scenario on the table you don't want to think
19 about, but just the same; also if there's an incident,
20 house cleaning, turmoil, that allows the Council to
21 keep that control.

22 - - -
23 (Councilmember Pachuta arrives.)
24 - - -
25 COUNCILMEMBER FLEMING: Okay. So are we

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1 leaving this in? Are we --
2 COUNCILMEMBER BATES: I'm good to leave it
3 in.
4 COUNCILMEMBER FLEMING: Okay. And I also
5 want to question (e), because: Except for purposes of
6 inquiries and investigations, the Council, the Mayor -
7 - the City Council, by a majority vote of the Council,
8 the Mayor and the City Council, and members of the
9 City Council shall deal with city officers and
10 employees who are subject to the direction and super-
11 vision of the city manager solely through the manager.
12 Okay?
13 But then we come down to the last sentence
14 of (e) and then it says all employees and officers --
15 they're not going to know what to do -- all employees
16 and officers shall be permitted to provide information
17 to any member of the City Council or member of the
18 public upon request.
19 So we're already telling them that they
20 don't have to -- you know, they really -- We, on a
21 day-to-day operational basis, truly need to go through
22 their supervisor, okay --
23 ATTORNEY McLENDON: Here's --
24 COUNCILMEMBER FLEMING: -- just to, you
25 know, would you please have so-and-so-call me? I'd

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1 like to ask them about such-and-such, okay? And then
2 it's up to the discretion of the director of the
3 department to say, "Okay. Go ahead and call
4 Ms. Fleming."
5 But then we come down here, and the public,
6 the City Council, the Mayor, anybody can contact
7 employees and officers.
8 ATTORNEY McLENDON: I've actually had to
9 deal with this issue long ago, far, far away. But how
10 this is actually -- again, it's tension. A lot of
11 times, these documents are setting up tensions to move
12 it forward within parameters.
13 What it boils down to if you really get to
14 the fine point of it, what this is shooting for is
15 it's not okay to come in and tell someone to do
16 something. You can't come and direct staff. But at
17 the same time, the other side says you don't have to
18 pretend like we don't exist and I can't talk to
19 someone or -- You know, it's all about the fact that
20 you can't give somebody direction.
21 But certainly if you go in and say, "Hey,
22 tell me about this," it doesn't tie your hands or the
23 employee's hands to say, "Well, oh, my gosh, let me
24 talk to the manager first."
25 You know, you can have reasonable conver-

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1 sations. I think the example I had -- I actually
2 wrote a memo on this a long time ago. And the example
3 I had is you can say -- you can come up to somebody
4 about a zoning and say, "You know, I'd like
5 information about this zoning," but you couldn't say,
6 "Well, don't you think that information demands this?
7 You make this decision about that zoning." Because
8 you want to keep the flexibility of having the
9 dialogue with Mayor and Council with the staff but
10 just the direction has to come from a manager. And
11 every manager will deal with that differently. It's a
12 really -- you know, every manager will deal with that.
13 But it's really to allow the flexibility to
14 have the dialogue it affords. So let's say we had
15 someone who was being difficult, a manager who was
16 being difficult, which is not totally out of the
17 question, and they came and said, "You can't talk to
18 anybody. You can't talk to this person."
19 No, no, no. You can talk to anybody you
20 want. You can discuss what's happening; you just
21 don't give direction. That's how --
22 COUNCILMEMBER FLEMING: What about this in
23 reverse where it's employees picking up the phone and
24 calling Mayor or Council, etc., etc.? I mean how does
25 that work in reverse?

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1 ATTORNEY McLENDON: If everything were
2 operating just perfectly in a wonderful universe,
3 you'd say, "Yeah, that's good; interesting. Probably
4 need to talk to --"
5 COUNCILMEMBER PATRICK: Follow the chain of
6 command.
7 COUNCILMEMBER PACHUTA: Follow the chain of
8 command.
9 ATTORNEY McLENDON: Yeah, "Talk to that
10 guy."
11 COUNCILMEMBER FLEMING: See, so I'm --
12 You don't think there's a conflict in this.
13 ATTORNEY McLENDON: I think actually this is
14 -- this language is important language.
15 COUNCILMEMBER DEAN: And this is very much
16 the system we have now. I mean this is --
17 ATTORNEY McLENDON: It's set up to
18 function --
19 COUNCILMEMBER FLEMING: Okay. That's fine.
20 ATTORNEY McLENDON: -- critical issue.
21 COUNCILMEMBER FLEMING: I just don't want
22 our employees to wonder whether they're supposed to
23 answer us or not, because we've already said that we
24 do not handle day-to-day operations and that we should
25 be going through the city manager for any questions or

1 inquiries, okay?
 2 So if I pick up the phone and call Chief
 3 King and say, "Hey, what's going on" at such-and-
 4 such -- That's a bad example.
 5 Let me go to Major Atkinson and say, "Mayor,
 6 I really should be going to Chief King," see? So I'm
 7 just --
 8 ATTORNEY McLENDON: Police are a bad example
 9 just because.
 10 MAYOR PITTMAN: Well, no. I really --
 11 ATTORNEY McLENDON: A good example is your
 12 community development director.
 13 MAYOR PITTMAN: Well, I really think pretty
 14 much this Council, it works. In the past, we have had
 15 Council members that did give direction to not only
 16 department heads but employees.
 17 But it appears most of them, if they want
 18 something, they do send an e-mail or at least copy me.
 19 They ask questions.
 20 I do think that Council does not need to be
 21 going to Major Atkinson's employees. I think it needs
 22 to stick within the department heads. I mean that's
 23 just my opinion. We don't want like, I don't know --
 24 you see what I'm saying? -- the department heads to
 25 filter that information like to Major Atkinson, what

1 is so and so?
 2 COUNCILMEMBER FLEMING: Well, me calling
 3 Jose for instance.
 4 MAYOR PITTMAN: Right. There you go.
 5 COUNCILMEMBER FLEMING: Jose is the
 6 gentleman that always does the setup for the -- for
 7 the civic center.
 8 I should not be calling Jose direct and say,
 9 "Hey, we've got a function on Wednesday. I'll meet
 10 you over there at 9 o'clock," da-da-da-da-da.
 11 MAYOR PITTMAN: It should go directly
 12 through Joey --
 13 COUNCILMEMBER FLEMING: Go through Joey.
 14 MAYOR PITTMAN: -- or whoever the person is.
 15 ATTORNEY McLENDON: And then, you know, the
 16 manager may -- if you were to say, "Hey, I'm going to
 17 really take the lead on this event," you know, and
 18 everybody said, "That's fine, great. You got it,"
 19 and I would see that as something that would still be
 20 able to happen.
 21 This comes to bear in -- you know, in places
 22 where they --
 23 MAYOR PITTMAN: I just think Council and
 24 Mayor need to stick to the department head communi-
 25 cation versus all the employees.

1 COUNCILMEMBER FLEMING: Well --
 2 ATTORNEY McLENDON: The language here works,
 3 actually.
 4 COUNCILMEMBER PACHUTA: Yeah, and --
 5 ATTORNEY McLENDON: I think the language
 6 works.
 7 COUNCILMEMBER PACHUTA: And I can't remember
 8 what city it was. I remember College Park had a big
 9 problem with this where council members were giving
 10 employees direct orders.
 11 ATTORNEY McLENDON: Yep.
 12 COUNCILMEMBER PACHUTA: And even when
 13 Melissa was here, I remember getting an e-mail because
 14 we were used to sending Sandra things to do. And
 15 Melissa sent us an e-mail and said, Send them to me
 16 because I need to prioritize her work, and when she
 17 gets something from a Council member, she thinks, "Oh,
 18 I have to do this first," whereas, in the priority of
 19 things, it may not be that important, and it's
 20 important for the department head to be able to
 21 prioritize even our requests without an employee
 22 feeling like, "Oh, I've got to do it because it's a
 23 Council member."
 24 COUNCILMEMBER FLEMING: Yeah.
 25 MAYOR PITTMAN: Absolutely.

1 See, I don't think that's clear enough,
 2 quite honestly.
 3 ATTORNEY McLENDON: This is one that I can
 4 just tell you every person who is going to be
 5 qualified to be a manager here will know exactly how
 6 to operate under this language because they're not --
 7 This only comes to bear if things are getting out of
 8 hand and the conversations are -- And then if it is,
 9 you know, like I said, I had to write a memo about
 10 this one, and the language is sufficient to -- I think
 11 it's sufficient to say don't give orders but I don't
 12 think it's such that it's trying not to stifle the
 13 Council's ability to call Joe and ask him, "Hey, tell
 14 me about a zoning case that's coming up. Can you give
 15 me -- tell me about this, that and the other," but not
 16 say, "Don't you think your opinion should be --?"
 17 I can find other language. If y'all want me
 18 to look for other examples of this language, I can.
 19 COUNCILMEMBER PACHUTA: I'm fine.
 20 COUNCILMEMBER PATRICK: I think it's
 21 sufficient.
 22 MAYOR PITTMAN: As long as everybody --
 23 COUNCILMEMBER FLEMING: I was just
 24 questioning it.
 25 ATTORNEY McLENDON: It's a good point. That

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1 is a very good thing to put in because that is big-
2 time important stuff.
3 MAYOR PITTMAN: Okay. Anything else, Ms.
4 Fleming? Ms. Dean?
5 Ms. Pachuta, I know you just came in. Did
6 you have anything?
7 COUNCILMEMBER PACHUTA: Brian's been
8 catching me up.
9 MAYOR PITTMAN: Okay. We are on page 10? 9?
10 10?
11 COUNCILMEMBER FLEMING: 10.
12 MAYOR PITTMAN: 10? Ms. Alexander?
13 COUNCILMEMBER ALEXANDER: ^{(g)(1), why put}
14 the language in there that you must state the reasons?
15 I mean that's a personnel issue.
16 ATTORNEY McLENDON: You're getting into a --
17 This is trying to set up process, and a process where
18 you dispose of something through this process in a
19 relatively short time frame.
20 When I read it, I think it provides a frame-
21 work for operating, because basically if you are -- if
22 you are removing or suspending someone, frankly, I
23 think due process, and if you're doing it, you're
24 needing to do it in the right way, you're going to
25 have to give the reasons. And if you didn't do that,

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1 I think it would be -- as the attorney, I would be
2 saying, "No. You got to put the reasons in there,"
3 because you can't -- you've got to have those actions
4 in justifying.
5 So that actually, I think, protects us a
6 little bit to make sure that if we got in that
7 situation, which, you know, hopefully not and
8 hopefully will never end up there. But if you ended
9 up saying, "Okay, it's time to suspend" someone, you
10 would need, for the purposes of due process to show
11 your basis for doing that. So I would leave it in
12 there.
13 This process language is not bad. I've read
14 it, and I said, "Okay. That's a framework we could
15 work on." It's not the only framework in the
16 universe, but it is -- it's a framework. And I saw
17 nothing that made me say, "Oh, my gosh." It's just
18 the machinery of you get to the point where you're
19 saying somebody's got to be suspended or removed.
20 COUNCILMEMBER ALEXANDER: ^{And under (2)}
21 there, it will be by the City Council and not an
22 administrative hearing officer?
23 ATTORNEY McLENDON: Um, um.
24 COUNCILMEMBER ALEXANDER: ^{Because we would}
25 be treating this one position different than every

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1 other employee in the entire city.
2 ATTORNEY McLENDON: This is a big one. This
3 one is the --
4 COUNCILMEMBER PATRICK: This is almost an
5 executive-level --
6 ATTORNEY McLENDON: Yes.
7 COUNCILMEMBER PATRICK: -- position where
8 they're held --
9 COUNCILMEMBER PACHUTA: Yeah.
10 COUNCILMEMBER PATRICK: -- directly
11 accountable to us.
12 COUNCILMEMBER DEAN: And he or she will be
13 under contract; right?
14 MAYOR PITTMAN: I think so.
15 COUNCILMEMBER PACHUTA: ^{Right. And this was}
16 my question about this because I mean one of the
17 reasons we moved to a hearing officer for employees
18 was to remove the politics out of the situation. So I
19 can see pros and cons.
20 COUNCILMEMBER BATES: ^{And one of the other}
21 reasons why we moved to the hearing officer was if
22 we're removing someone, that seems a little odd that
23 we actually hear their appeal. I mean why bother to
24 appeal?
25 COUNCILMEMBER PACHUTA: ^{Because, to me,}

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1 wouldn't you then have like -- I'm assuming they'll be
2 under contract and the contract specified the reasons
3 for which we can terminate someone. And then that
4 would be our resolution, as we would be specifying our
5 reasons under the contract, and then the hearing
6 officer would be objectively verifying that yes, we
7 did follow the contract or whatever within our reasons
8 that we stated in the resolution.
9 Does that make sense?
10 ATTORNEY McLENDON: ^{Good conversation. Can}
11 you give me two seconds and let me --
12 COUNCILMEMBER FLEMING: ^{Well, the other}
13 question I had about both of those items, just a
14 comment is why is it in here and not the personnel
15 manual again? I mean why are we putting disciplinary
16 or subject-to-dismissal type items in our Charter for
17 a single employee?
18 COUNCILMEMBER PATRICK: ^{I guess just to say}
19 again that's not just an employee, that's who we are
20 appointing to run the daily operations of the city.
21 So in my view, this is something that should come to
22 us if there's a problem. We should be the ones that
23 do that.
24 ATTORNEY McLENDON: ^{The way this is set up,}
25 the structure of this process -- and I could find

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1 other processes; I could actually go look and see how
2 many charters have the process.
3 But as a process, it is not a bad one from
4 the standpoint that I think it protects us a little
5 bit, frankly, because what you do is you, you know,
6 "Remove suspended, and here's why," and then, you
7 know, they could request to have that reviewed. And
8 then you get into a full review and let everybody tell
9 their side of the story, and then, you know, "Oh,
10 okay. Sorry. We're convinced," you withdraw it, or
11 "No, we've documented that hearing, and my goodness,
12 we make that decision."
13 If there is enough will here, I'm happy to
14 revisit this whole thing and let me see who has ones
15 in and who doesn't, because this is not something I
16 see all the time.
17 COUNCILMEMBER PACHUTA: Well, and this --
18 I'm kind of looking back at past experience, too.
19 We're trying to protect ourselves.
20 To me it seems better to go to an objective
21 hearing officer who would apply the facts, whatever we
22 stated in our resolution, to the terms and conditions
23 of the contract versus if a hearing gets emotional --
24 and as politicians tend to do; we get emotional -- we
25 may end up if he then appeals it like to, you know,

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1 Dekalb Superior Court or any kind of employment claim,
2 to take that emotion out of it, but --
3 ATTORNEY McLENDON: Let me make some
4 recommendations on this issue. I'm going to look to
5 see how many people have it and see if it's necessary
6 to be in the Charter. I think that was a valid
7 question.
8 Let me work through the scenarios, because
9 what I think this is doing is just to protect us in
10 that scenario, because that's a terrible -- that's a
11 hard scenario when you're in it; it is zero fun. And
12 what this would do is --
13 I see the benefit of having this process.
14 Let me report back to you on this one, come up with
15 some recommendations. Is that okay?
16 COUNCILMEMBER PATRICK: That's fine.
17 A question: If we were to go with this
18 process, would this be like a public hearing where the
19 public would be able to voice an opinion and say,
20 "Hey, this person is just no good," or --
21 COUNCILMEMBER PACHUTA: Well, I hope not.
22 COUNCILMEMBER PATRICK: -- "this person is
23 thumbs-up?"
24 ATTORNEY McLENDON: This is a hearing. This
25 would be not an agenda item from the standpoint of,

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1 you know, public comment. This is going to be a
2 hearing that's much more where you -- that's where I
3 always say: removed from that legislative to that
4 quasi-judicial role --
5 COUNCILMEMBER PATRICK: Okay.
6 ATTORNEY McLENDON: -- which is a fact-
7 finding hearing. You know, that's --
8 COUNCILMEMBER BATES: Which proves my point,
9 because if we're the body that's making the decision
10 to terminate, we've in theory already done our fact-
11 finding and so they're appealing a decision that we've
12 already made.
13 ATTORNEY McLENDON: The only benefit I can
14 see is by running it through that due-process step of
15 saying, "This is what I think, and, by gosh, I'm
16 prepared to move forward with this," and you move it
17 through the due-process step of a hearing, then
18 there's no question. No one can ever say, "Well, you
19 jumped to conclusions. You were wrong factually," and
20 you can say, "No, I listened to everything, and guess
21 what? I still agree."
22 I can see some benefit to that just -- But
23 let me -- It's not in every charter. Let me go look
24 at this.sd
25 COUNCILMEMBER BATES: Well, I'm okay with

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1 this process being in the Charter, but I'm with
2 Ms. Alexander and Ms. Pachuta that I think it should
3 be done by a hearing officer and not an appeal to
4 Council.
5 ATTORNEY McLENDON: Let me think on it. Can
6 you let me think about this --
7 COUNCILMEMBER BATES: 30 seconds?
8 ATTORNEY McLENDON: -- conversation?
9 COUNCILMEMBER BATES: 45 seconds?
10 COUNCILMEMBER FLEMING: This is --
11 ATTORNEY McLENDON: Do you want a good
12 answer or not a good one?
13 COUNCILMEMBER FLEMING: This is one time I
14 will definitely vote for a hearing officer because, as
15 you guys said, if we've made the decision to dismiss
16 this person, then it needs to go in front of a hearing
17 officer. I will never have a hearing officer for any
18 other stuff, but definitely for this.
19 COUNCILMEMBER PATRICK: One question.
20 ATTORNEY McLENDON: It's funny, but this is
21 the one that I'm thinking I really want y'all to do.
22 COUNCILMEMBER DEAN: I would like to hear --
23 I would like some more information on this just
24 because if we make a decision and then it goes before
25 a hearing officer, he or she might not have all the

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1 information that we would have and could say, "Okay.
2 No. You guys were wrong," and then --
3 COUNCILMEMBER PATRICK: Or if a hearing
4 officer comes back and says, "No, we don't affirm -- I
5 don't affirm the decision of the Council," then we're
6 stuck with a -- a pig-in-the-poke more or less.
7 ATTORNEY McLENDON: Let me -- let me --
8 COUNCILMEMBER BATES: That's why you -- And
9 we're talking about a situation that's got to be
10 pretty drastic for --
11 COUNCILMEMBER PATRICK: Yeah.
12 COUNCILMEMBER BATES: -- us to get there.
13 COUNCILMEMBER PATRICK: Yeah.
14 ATTORNEY McLENDON: For drastic times.
15 COUNCILMEMBER BATES: That's why this body,
16 whomever is sitting up here along with legal counsel
17 had better have all of their --
18 COUNCILMEMBER PATRICK: Ducks in a row?
19 COUNCILMEMBER BATES: -- t's crossed and i's
20 dotted, and ducks in a row or whatever analogy you can
21 come up with before you take it to that next step,
22 because if this body, whomever is up here, is arbi-
23 trarily doing stuff where it could get reversed by a
24 hearing officer or by a court, then somebody didn't do
25 what they needed to do in the first place to make sure

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1 that it was tight, so --
2 ATTORNEY McLENDON: The question, I guess,
3 is -- and I'm -- again, I'm still going to reserve;
4 I'm going to come back to you. But you're exactly
5 right. I see this as a pressure valve for that
6 decision, decision process, you know.
7 And then what it does is it comes back
8 through the hearing process so you know that if the
9 other person -- if the person has a full opportunity
10 to present their case, if they don't present it, it's
11 off the table. So that's the tell-me-every-reason-
12 I'm-wrong.
13 And if at that point, you know, if there is
14 so much that you would say, Well, we're going to
15 rescind that action, you've had another bite of the
16 apple." But if you've heard the entire case, you sort
17 of lock the legal arguments going forward because if
18 it's not already in front of you, you can't bring it
19 up on an appeal.
20 And it lets you sort of evaluate both sides
21 of the argument before that becomes a final decision;
22 whereas, if you just dive in and say, "These are my
23 five reasons and that's a final decision," then we
24 don't have that -- that additional process to sort of
25 let us make sure we're making the right call.

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1 I am starting to talk myself into it, but
2 let me -- let me look at it.
3 MAYOR PITTMAN: Mr. Bates?
4 COUNCILMEMBER BATES: What page are we on?
5 10?
6 COUNCILMEMBER PACHUTA: 10.
7 MAYOR PITTMAN: We're still on 10.
8 COUNCILMEMBER BATES: I'm good on 10.
9 MAYOR PITTMAN: Ms. Pachuta?
10 COUNCILMEMBER PACHUTA: No, I don't have
11 anything.
12 MAYOR PITTMAN: Mr. Patrick? Ms. Fleming?
13 COUNCILMEMBER FLEMING: I'm not on page 10.
14 MAYOR PITTMAN: Well, let's get through --
15 Ms. Dean, do you have anything --
16 COUNCILMEMBER DEAN: I'm good.
17 MAYOR PITTMAN: -- on page 10?
18 Okay. Go ahead.
19 COUNCILMEMBER FLEMING: I want to clarify
20 that we are not changing Section 2.05 and we are not
21 changing Section 2.06 in any way.
22 ATTORNEY FELGIN: If it's -- if it's not in
23 this.
24 COUNCILMEMBER FLEMING: Confirm, please.
25 ATTORNEY McLENDON: Let's see.

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1 COUNCILMEMBER FLEMING: No changes?
2 ATTORNEY McLENDON: Those Code sections are
3 not affected by this.
4 COUNCILMEMBER FLEMING: Thank you very much.
5 MAYOR PITTMAN: Page 11. Ms. Alexander?
6 COUNCILMEMBER ALEXANDER: Just clarification
7 under a couple of things. You have the city clerk
8 keeping a journal of proceedings at the Council
9 meetings and proceedings at meetings of other City
10 boards.
11 As far as I know, that's not happening now.
12 She does not keep record of the Planning Commission
13 meetings.
14 ATTORNEY McLENDON: That language generally
15 says that the clerk is responsible for -- I always
16 call it the clerk is the keeper of the records.
17 So no matter what boards exist or are out
18 there, it doesn't necessarily mean the clerk has to be
19 present at every one but is the keeper of the records
20 to ensure that the records are kept in conformance
21 with the law. So it's the clerk's duty to make sure
22 that the meeting is appropriately documented, which
23 really appropriate documentation of a meeting is
24 minutes under the law. I mean that's sort of the
25 basis.

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1 So I would say whether the clerk is present
2 or not, they are responsible for ensuring that the
3 documentation occurs pursuant to the law, and that's
4 why I think it is appropriate to have it in.
5 COUNCILMEMBER BATES: I guess the word that
6 bothered me was the word "keeping," because I would
7 think holding or maintaining or preserving. But I
8 keep a log of my activities; therefore, I'm writing
9 them myself; versus holding a log of someone's
10 activities where they provide them to me.
11 I read that word "keeping" as both an action
12 item that that's their duty to write them versus
13 purely holding them and maintaining them.
14 ATTORNEY McLENDON: And I'm playing on that
15 same thought, but "keeping," the clerk ultimately is
16 responsible for all records of the City, so there's a
17 keeping function.
18 COUNCILMEMBER BATES: Maintaining, holding,
19 preserving.
20 ATTORNEY McLENDON: They are the -- if it's
21 part of the City, it's the clerk that is responsible.
22 COUNCILMEMBER ALEXANDER: They are basically
23 the custodian of the records.
24 ATTORNEY McLENDON: Yes.
25 COUNCILMEMBER FLEMING: Yes.

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1 ATTORNEY McLENDON: So I'm not disliking
2 that language because I think they do keep records.
3 COUNCILMEMBER BATES: But the word "keep"
4 also suggests that they're actually writing them or --
5 COUNCILMEMBER DEAN: Taking them.
6 COUNCILMEMBER BATES: -- taking them.
7 COUNCILMEMBER PATRICK: I'll disagree
8 because --
9 COUNCILMEMBER BATES: If I keep a personal
10 log, I am writing a personal log.
11 COUNCILMEMBER FLEMING: That's assuming,
12 though.
13 COUNCILMEMBER BATES: Yeah. And we don't
14 want assumptions or ambiguities in here.
15 COUNCILMEMBER PATRICK: Are you ultimately
16 saying you'd prefer to see "custodian of record, of
17 records?"
18 COUNCILMEMBER BATES: Shall be responsible
19 as the custodian of all proceedings or the record
20 custodian or something.
21 ATTORNEY McLENDON: You know, if it's our
22 Charter language -- and this Charter is old. I mean
23 this Charter has a lot of history. Let me go find
24 some examples of other charters that deal with this
25 concept and let's see what's in those, how they -- how

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1 they word that language.
2 That might be a good thing to look at
3 because, ultimately, what you're talking about is the
4 clerk does have responsibilities not only of
5 ensuring -- ensuring the record being -- physically,
6 that somebody's out there keeping it but also once
7 it's -- preserving it and being the permanent
8 custodian. So let's look. Maybe I'll find some newer
9 language that's been more recent for comparison
10 purposes.
11 COUNCILMEMBER BATES: Yeah. My only issue
12 was the word "keeping," but --
13 ATTORNEY McLENDON: Yeah. The concepts --
14 yeah, the concepts are all going to be the same and we
15 might find better wording out there that doesn't
16 confuse people.
17 MAYOR PITTMAN: Okay.
18 COUNCILMEMBER ALEXANDER: And the next thing
19 that I don't know why it was removed, as we fought
20 long and hard for this bonding, and why was it removed
21 from this Charter? Because our theory was that anyone
22 that signs a check should be bonded to protect the
23 City. And why was this language removed, I don't
24 know.
25 ATTORNEY McLENDON: I'm okay with putting it

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1 back in.
2 COUNCILMEMBER ALEXANDER: Because it took --
3 we fought long and hard to get that added and to make
4 that a requirement of persons signing checks for the
5 City.
6 ATTORNEY McLENDON: I didn't know the
7 history on that. So if there was a specific history
8 on it, it seems a little -- I can see why it came out.
9 But if there was a specific history, that is some-
10 thing --
11 COUNCILMEMBER ALEXANDER: I mean there --
12 ATTORNEY McLENDON: -- you want to leave
13 in --
14 COUNCILMEMBER ALEXANDER: -- was no
15 occurrence that caused us to enact that. It was just
16 a -- I can't even remember who suggested it to
17 Council, that if they're bonded, then you have -- it
18 helps you on your liability responsibilities should
19 they start writing checks, you know, to purchase a
20 play station or whatever.
21 ATTORNEY McLENDON: If there is a -- if this
22 was something that was specifically put in here and
23 everybody says that should be in there, it doesn't
24 create anything that we can't overcome. It's just's
25 something we got to remember to do, frankly. So I

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1 have no problem with leaving that in and I see no
2 reason why you couldn't just leave it in.
3 COUNCILMEMBER ALEXANDER: I think that
4 should be a requirement of the city manager, too. In
5 fact, I thought that was in some of the documents that
6 we received from Colin regarding the bonding would be
7 paid for by the City or something. I think that was
8 in some of the literature he gave us.
9 ATTORNEY McLENDON: Okay. If everybody's
10 amenable, I have no problem with un-deleting that, and
11 I can look to the city manager. We might talk to
12 Colin on that as well. Look to the city manager
13 language. But now is your chance if you like that in
14 there.
15 ATTORNEY FELGIN: You wanted the same \$5,000
16 bond for the city manager or higher?
17 COUNCILMEMBER ALEXANDER: Is that what it
18 was?
19 COUNCILMEMBER BATES: Yes.
20 ATTORNEY FELGIN: The city clerk was \$5,000.
21 COUNCILMEMBER ALEXANDER: I can't remember
22 what we required it to be. I thought it was \$25,000 I
23 think is what -- I thought was what our requirement
24 was.
25 ATTORNEY FELGIN: The Charter right now says

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1 \$5,000.
2 COUNCILMEMBER ALEXANDER: Yeah, but I
3 thought it was more than that.
4 ATTORNEY McLENDON: Okay.
5 MAYOR PITTMAN: Just check.
6 ATTORNEY McLENDON: Unless our Charter was -
7 - yes, if it did, it didn't get into MuniCode, so
8 let's -- let's find out now.
9 Again, if y'all wanted to make it twenty-
10 five, this is the perfect time to do it. Very simple
11 to put that in.
12 But whatever number you-all want in that
13 blank. Just the only thing with it is it'll be a
14 process that's got to be remembered to be done, you
15 know; make sure that it's done.
16 MAYOR PITTMAN: Mr. Bates? Ms. Pachuta?
17 COUNCILMEMBER PACHUTA: Where it says -- and
18 this is something I've said before. I think we
19 require a lot of our city clerks to do much more than
20 normal city clerks' duties. But this last -- this
21 line, "and performing such other duties as may be
22 required by the Council or Mayor," I'm assuming that
23 that should -- really, the city manager is going to be
24 managing much more the day-to-day of what other duties
25 the clerk should be doing.

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1 ATTORNEY McLENDON: I think that makes
2 sense. If you change it to manager directed and
3 chosen, you probably would want to change that as
4 well.
5 MAYOR PITTMAN: Yes.
6 Anything else?
7 COUNCILMEMBER PACHUTA: Huh-uh.
8 MAYOR PITTMAN: Mr. Patrick? Ms. Fleming?
9 COUNCILMEMBER FLEMING: No.
10 MAYOR PITTMAN: Ms. Dean?
11 COUNCILMEMBER DEAN: I'm good.
12 MAYOR PITTMAN: Okay, page 12. Ms.
13 Alexander?
14 COUNCILMEMBER ALEXANDER: I didn't have
15 anything.
16 MAYOR PITTMAN: Mr. Bates?
17 COUNCILMEMBER BATES: I have nothing.
18 MAYOR PITTMAN: Ms. Pachuta?
19 COUNCILMEMBER PACHUTA: Huh-uh.
20 MAYOR PITTMAN: Anyone down here?
21 COUNCILMEMBER FLEMING: We're not changing
22 2.09 or 2.10. Confirm?
23 ATTORNEY McLENDON: No, we are not.
24 COUNCILMEMBER FLEMING: Thank you.
25 MAYOR PITTMAN: Okay, page 13. Ms.

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1 Alexander?
2 COUNCILMEMBER ALEXANDER: No.
3 MAYOR PITTMAN: Bates?
4 COUNCILMEMBER BATES: Is Section (a) is
5 exactly the same as 2.07 (e) which is on page 9?
6 ATTORNEY FELGIN: Mr. Baesinger suggested to
7 put it in two separate places.
8 COUNCILMEMBER BATES: Okay. I just wanted
9 to make sure that there was a reason for doing it.
10 Okay.
11 MAYOR PITTMAN: Okay. Ms. Pachuta? Mr.
12 Patrick? Anybody down here?
13 Okay. Page 14.
14 ATTORNEY FELGIN: This is the last part of
15 the --
16 MAYOR PITTMAN: I'm sorry?
17 ATTORNEY FELGIN: This is the last revision.
18 MAYOR PITTMAN: Okay. Ms. Alexander?
19 COUNCILMEMBER ALEXANDER: I'd like to
20 require the same bonding requirement.
21 COUNCILMEMBER BATES: I'm good.
22 COUNCILMEMBER PACHUTA: Huh-uh.
23 MAYOR PITTMAN: Mr. Patrick? Ms. Fleming?
24 COUNCILMEMBER FLEMING: Bear with me. I'm
25 so sorry. We're on page 14?

1 MAYOR PITTMAN: Yes, ma'am.
 2 COUNCILMEMBER FLEMING: Okay. Section 2.13
 3 presently lists as administrative duties of the Mayor,
 4 and you've listed it as the finance director.
 5 This is a question for legal counsel.
 6 ATTORNEY McLENDON: Okay. Yes, ma'am.
 7 COUNCILMEMBER FLEMING: Our current Charter
 8 says 2.13 is Administrative Duties of the Mayor, and
 9 in this ordinance that you prepared, 2.13 says finance
 10 director.
 11 ATTORNEY McLENDON: And what this is is
 12 these are powers -- And that's actually the concept we
 13 were just talking about.
 14 COUNCILMEMBER FLEMING: Okay.
 15 ATTORNEY McLENDON: These are powers,
 16 current powers that are in the Charter as we're
 17 currently organized, and once it moves over to the
 18 city managers, I think these powers -- these sections
 19 become a nullity.
 20 We were just talking about making sure that
 21 they survive until the appointment of a manager. So
 22 there's some, you know, sort of these die on the day
 23 you appoint the manager, and you might still want to
 24 revisit that.
 25 But that's what this is is this is just

1 know, we can do what you-all want to do with that.
 2 COUNCILMEMBER DEAN: City manager.
 3 COUNCILMEMBER PATRICK: Yes.
 4 ATTORNEY McLENDON: Okay.
 5 The second paragraph, I think what's
 6 happening there is they're really saying that as long
 7 as they come to you guys and authorize it, you don't
 8 have to have a financial director position. So it's
 9 saying yes, there is hereby created this financial
 10 director position and here are all the duties, etc.
 11 Then it says, But you know what? If the
 12 manager comes to you and says, I don't really need a
 13 financial director -- which I don't believe will
 14 probably be what we have here, but if that were the
 15 case, they could say, you know, I can do that in
 16 conjunction with this other person and handle all
 17 these functions.
 18 It gives the authority to not have that
 19 position, because, technically, if you say there shall
 20 be a finance director, then, my goodness, there shall
 21 be unless there's something that says there's another
 22 way to do business.
 23 COUNCILMEMBER BATES: But it was in conflict
 24 because if the Mayor and Council appoint the finance
 25 director, the city manager can't abolish the finance

1 taking the available number and -- and --
 2 COUNCILMEMBER DEAN: But it says on (a) --
 3 I'm sorry. Are you finished?
 4 COUNCILMEMBER FLEMING: No. You go ahead
 5 because right now we're still working on it. Go
 6 ahead.
 7 COUNCILMEMBER DEAN: Because it says under
 8 Finance Director (a), the Mayor may appoint a finance
 9 director, and then (b) says the city manager.
 10 So why is -- I mean I just want to make sure
 11 that that's going to be the city manager because it
 12 was changed under (b) and the whole consistency thing.
 13 COUNCILMEMBER ALEXANDER: Exactly, because
 14 it conflicts with the other previous too. It needs
 15 discussed.
 16 COUNCILMEMBER DEAN: Right.
 17 COUNCILMEMBER ALEXANDER: Finance director
 18 is not one of the exclusive appointments of the Mayor.
 19 COUNCILMEMBER FLEMING: Correct.
 20 MAYOR PITTMAN: That's right.
 21 COUNCILMEMBER BATES: It's 2.07A(a)(1).
 22 ATTORNEY McLENDON: Yeah. What this is
 23 doing is saying --
 24 Typically, your finance director would be
 25 appointed by the Mayor and Council but it's -- you

1 director.
 2 ATTORNEY McLENDON: Right.
 3 COUNCILMEMBER BATES: Because it says right
 4 now that the Mayor may appoint the finance director,
 5 and then it says but the city manager can abolish the
 6 finance director.
 7 ATTORNEY McLENDON: But that's with the
 8 approval of the Council.
 9 COUNCILMEMBER BATES: Right.
 10 COUNCILMEMBER DEAN: So can we have the city
 11 manager appoint the finance director also, I mean just
 12 because I think that that's --
 13 ATTORNEY McLENDON: Well, you know --
 14 COUNCILMEMBER DEAN: Yeah.
 15 ATTORNEY McLENDON: -- I heard that one.
 16 COUNCILMEMBER ALEXANDER: Yes.
 17 COUNCILMEMBER PACHUTA: Yes.
 18 ATTORNEY McLENDON: We'll do that.
 19 COUNCILMEMBER FLEMING: So my preference,
 20 then, on 2.13 Finance Director, the title is incorrect
 21 and should have some type of additional duties of city
 22 manager or fall in that section.
 23 ATTORNEY McLENDON: Under your traditional
 24 system, which is really what we have, we have a
 25 finance director as a separate entity. And I think

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1 this is just language that would contemplate that you
2 are not locked into having that as a separate entity.
3 If you had someone as a manager who did not desire to
4 have that separate position, he could convince you it
5 was a good idea to just let me consolidate those
6 positions somewhere else and do it more efficiently.
7 And if I had a manager that wanted to do
8 that: "I don't want the finance director, I want to
9 be able to spread those duties out between these
10 people and I'm going to -- you know. I have a finance
11 background and I'm going to do the rest of it" --
12 COUNCILMEMBER FLEMING: Well, that's Section
13 (b).
14 ATTORNEY McLENDON: -- it gives that
15 authority.
16 COUNCILMEMBER FLEMING: We're giving them
17 the authority to merge department positions, etc.
18 ATTORNEY McLENDON: To bring it to you. If
19 you didn't have that section (b), then even if they
20 wanted to do it, you still have a finance director
21 position called out.
22 COUNCILMEMBER FLEMING: But I --
23 COUNCILMEMBER PATRICK: Just out of
24 curiosity, don't we address that under Section 2.11
25 under Organization, basically keeping the organiza-

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1 tion of the City as it is unless by Council by such
2 ordinance and upon recommendation of the city manager?
3 ATTORNEY McLENDON: Here's where we're
4 getting: The Code we want, we're changing the format
5 of this to allow the city manager to make certain
6 appointments that would typically be charter
7 positions.
8 We probably need to go through and think
9 through reconciling all that. Typically, these are
10 all Charter positions. Mayor and Council sort of
11 retain authority to, you know, I appoint the clerk and
12 appoint the finance director and appoint this.
13 What I'm hearing in this conversation is,
14 "Nah, we'd rather have the manager do that." So I
15 think your point is well taken. If it's a Charter
16 position up here in the universe that says it exists
17 no matter what, I have to have this language.
18 But you've given broad authority to the
19 manager organizationally. If you're calling it out in
20 the Charter, I think you need Subsection (b), because
21 if you call it out in the Charter, that position it
22 exists; it is necessary to exist by virtue of your
23 Charter.
24 But this says: But, then, there's an escape
25 valve. If you don't want it, you know, he -- he or

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1 she comes in and says, "You know, I don't really need
2 this," and there's a methodology to do it as opposed
3 to saying, "Oh. Well, somebody's got to amend the
4 Charter."
5 COUNCILMEMBER ALEXANDER: So did we agree to
6 change the heading, the 2.13 heading? because Section
7 (b) does not apply to the finance director.
8 COUNCILMEMBER FLEMING: It should just be
9 Additional Duties of the City Manager.
10 ATTORNEY FELGIN: How about Additional
11 Authority of the City Manager?
12 COUNCILMEMBER FLEMING: Additional
13 Authority.
14 MAYOR PITTMAN: Okay.
15 ATTORNEY McLENDON: Well, but it says if you
16 -- if --
17 COUNCILMEMBER ALEXANDER: Do you understand?
18 ATTORNEY McLENDON: Yeah. I thought we were
19 eliminating the finance director.
20 COUNCILMEMBER ALEXANDER: No.
21 MAYOR PITTMAN: No. No, no, no.
22 ATTORNEY McLENDON: We got to keep that in.
23 Okay. I'm sorry.
24 MAYOR PITTMAN: Okay. If there's nothing
25 further, then you will make --

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1 Go ahead. I'm sorry.
2 COUNCILMEMBER PATRICK: So we're keeping (b)
3 or striking (b) or we're still thinking about (b)?
4 COUNCILMEMBER ALEXANDER: Leaving.
5 COUNCILMEMBER FLEMING: We're keeping (b) in
6 there.
7 COUNCILMEMBER PACHUTA: But it's a --
8 COUNCILMEMBER FLEMING: But we're chang--
9 COUNCILMEMBER PACHUTA: -- separate section.
10 COUNCILMEMBER FLEMING: We're changing --
11 COUNCILMEMBER ALEXANDER: The heading.
12 COUNCILMEMBER FLEMING: -- the heading.
13 ATTORNEY McLENDON: Then, I think that's
14 fine.
15 MAYOR PITTMAN: Okay. So if you will do the
16 research, make the changes, send it to Council, then
17 they can send back their comments and suggestions and
18 we will put this on another agenda.
19 ATTORNEY McLENDON: I think hopefully I can
20 get what y'all want, and it gives us another chance to
21 revisit the policy we're talking about. But the next
22 one, hopefully, will be in line with what we've done.
23 COUNCILMEMBER FLEMING: Okay. I want to
24 confirm one thing before we move off of this subject.
25 We are not changing Section 2.14, we're not changing

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1 Section 2.15 or 2.16.
2 ATTORNEY McLENDON: No, ma'am. I don't have
3 anything after --
4 COUNCILMEMBER FLEMING: Just wanted --
5 ATTORNEY McLENDON: -- 2.13.
6 COUNCILMEMBER FLEMING: -- to confirm.
7 COUNCILMEMBER ALEXANDER: These are merely
8 suggestions by legal, and Council can add additional
9 changes if requested.
10 ATTORNEY McLENDON: This?
11 COUNCILMEMBER ALEXANDER: Yes.
12 ATTORNEY McLENDON: Yes.
13 ATTORNEY FELGIN: I'd welcome it.
14 ATTORNEY McLENDON: Absolutely.
15 ATTORNEY FELGIN: That's why I sent it out
16 early.
17 MAYOR PITTMAN: Okay. Thank you.
18 Okay. Next on the agenda is M-1 Permitted
19 Uses, Ms. Fleming.
20 COUNCILMEMBER FLEMING: Yes. Due to the --
21 the issues that have arisen within the city, and about
22 three years ago, I even made a comment about M-1 and
23 M-2 being so close to residential -- in my particular
24 area, for instance, is that we even have slaughter-
25 houses listed as permitted.

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1 So I have requested -- and I'm very sorry;
2 I'm trying to get my ducks in a row here. I have
3 requested text amendments and I wanted us to consider
4 either on the Essential services for Section 23-911-
5 M-1 Light Manufacturing District, one of the permitted
6 uses was essential services. It does list sewer
7 distribution and collection lines, pumping facilities
8 for water and sewer systems.
9 In this particular definition, it's not
10 listed in Section 402 in the definitions section nor
11 in this section does it actually say governmental
12 agency -- contracted for governmental agencies or
13 private or public sector.
14 So I was requesting that we delete or put up
15 for questioning here or suggestions -- deleting the
16 sewer distribution and collection lines, pumping
17 facilities for water and sewer systems for the
18 essential services.
19 Shall I go on?
20 MAYOR PITTMAN: You can. That would have to
21 go through the --
22 COUNCILMEMBER FLEMING: Planning and zoning.
23 yes, or the Planning Commission. I have requested
24 this for discussion here so that Planning Commission
25 can take ahold of it too.

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1 There's another also-listed area that lists
2 water and sewage plants in M-1 as a permitted use, and
3 that is intermediate impact facilities: "Colleges,
4 junior colleges, and universities, industrial training
5 facilities (simulated industrial environmental with
6 classroom instruction)", whatever, "radio and
7 television transmission facilities, water and sewerage
8 plants and water storage facilities."
9 So we have water in the storage plants and
10 pumping facilities, etc., distribution and collection
11 lines. We have it listed twice, and due to the
12 problems that we have experienced, I would suggest
13 eliminating water and sewage plants from immediate
14 impact facilities, and also what I commented about
15 essential services, and I would like Council's
16 comments.
17 COUNCILMEMBER DEAN: Well, I --
18 MAYOR PITTMAN: Ms. Alex- --
19 COUNCILMEMBER DEAN: Oh, I'm sorry.
20 MAYOR PITTMAN: Oh, you can go ahead and
21 start.
22 COUNCILMEMBER DEAN: I asked about this back
23 in September, and it was the intermediate impact
24 facilities and it was water and sewage plants.
25 But what is -- number one, what is an inter-

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1 mediate impact facility? That's the question.
2 That's a question.
3 MR. COOLEY: The question and answer is
4 intermediate impact facilities, it lists all of them
5 including water and sewer plants.
6 COUNCILMEMBER DEAN: Okay. What we have
7 here, is that a transfer station or is that a plant?
8 because from what I'm seeing --
9 MR. COOLEY: It says plants.
10 COUNCILMEMBER DEAN: No. What we have. The
11 facility that we've got precipitant.
12 MR. COOLEY: Legal's interpretation and my
13 interpretation both were that this is based upon the
14 permits they had, it is a water and/or sewage
15 treatment plant. It fit the definition.
16 COUNCILMEMBER DEAN: Okay. Now, under
17 prohibited uses, it says, industrial sewage and waste,
18 and, "Every use shall be so operated as to prevent the
19 discharge into any stream, lake, sewer system or the
20 ground of any waste which exceeds the standards for
21 effluents as promulgated by the Environmental Division
22 of the Georgia Department of Natural Resources."
23 And the other thing, odors, because I was
24 alerted to this because of the stench, "Every use
25 shall be so operated as to prevent the emission of

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1 odors in concentration as to be readily perceptible at
2 any point at the lot of the property on which the use
3 is located."
4 Well, apparently the City has received a
5 number of complaints about this facility since
6 September; right?
7 MR. COOLEY: There have been two that I'm
8 aware of that were investigated. Again, that is not -
9 - there's a difference between use and the way it's
10 maintained and performs. It has to meet the standards
11 that are set out in the Code, which is can't smell it
12 past the line, etc. If they're not, they're in
13 violation of the Code.
14 COUNCILMEMBER DEAN: Well, this is under --
15 these definitions are prohibited uses, and that has
16 been there. I mean I'm just confused. I don't know
17 how this --
18 MR. COOLEY: Well, there's a difference
19 between the permitted uses and the operational aspects
20 of it. What you're talking about is something -- what
21 it's talking about is something that creates a
22 nuisance. It's just not the smell; it's talking about
23 dust, it's talking about noise, it's talking about all
24 those things. Basically, it's saying -- and I believe
25 further than the portion, it defines those nuisances.

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1 They cannot create a nuisance. And if they do, that's
2 when they're subject to some sort of enforcement
3 action.
4 COUNCILMEMBER DEAN: Right.
5 COUNCILMEMBER BATES: Well --
6 COUNCILMEMBER DEAN: And they have; right?
7 I mean they have been.
8 MR. COOLEY: They have been. As you've seen
9 through the e-mails and everything, they've been cited
10 apparently by Quality of Life, they've been cited by
11 the health department, etc.
12 So the process, the way it's set up, the
13 legal process has gone through and it has been
14 accomplished, to my understanding of it. But the use
15 itself -- and I don't necessarily agree with it -- is
16 a permitted use, but this is something that was
17 actually added to this section of the Code back in
18 2008. It was not there before, and then verbiage was
19 added by Council to the Code.
20 So for whatever reason, you know, you got to
21 remember we are on Dekalb Water and Sewer, so I don't
22 even know why that would be in there to begin with but
23 it is.
24 COUNCILMEMBER DEAN: But the intermediate
25 impact facilities, I mean is this the facilities

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1 associated with these things? For example, water and
2 sewage plants and water storage facilities related to
3 these other like colleges, junior colleges?
4 MR. COOLEY: No, ma'am. It says essential
5 services, period; it goes on and then it's comma,
6 comma, comma, and lots of essential services. No. It
7 reads that that is a permitted use.
8 COUNCILMEMBER BATES: I mean the bottom line
9 is is that it needs to come out of M-1; it needs to go
10 into M-2 and probably as a conditional use. So I'm in
11 favor of pulling the water and sewer plant and the
12 water treatment both out of the intermediate impact on
13 M-1 and putting them over into M-2, either permitted
14 or conditional. Preference would be on conditional,
15 probably.
16 The question's going to be on the essential
17 services piece, though, those are specific to govern-
18 mental facilities to provide for the public good.
19 MR. COOLEY: Not necessarily.
20 COUNCILMEMBER BATES: Okay. But --
21 MR. COOLEY: There are times when -- and
22 this is not really applicable to Doraville because
23 most of the city is built out.
24 But when you're in a larger area that has
25 undeveloped area, sometimes if there's not available

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1 service water and sewer, they will consider package
2 plants for sewage, and that's private. It's not a
3 good practice. It's better to control your growth by
4 having sewer lines and not allowing those to happen,
5 but it does happen, so.
6 But that's not the case in Doraville. We do
7 not have a lot of area that is not sewered where
8 they're going to need a package plant. In fact,
9 Dekalb County would probably fight it would be my
10 guess because they don't want a city --
11 ATTORNEY McLENDON: Let me -- let me --
12 COUNCILMEMBER PACHUTA: Well, we have --
13 COUNCILMEMBER ALEXANDER: We have a lot of
14 subdivisions that are on septic.
15 COUNCILMEMBER PACHUTA: Carver Hills is
16 septic and I think portions of --
17 COUNCILMEMBER ALEXANDER: Doral Drive.
18 COUNCILMEMBER PACHUTA: -- Ms. Fleming --
19 COUNCILMEMBER PATRICK: Flowers Road.
20 MR. COOLEY: Right. That's --
21 ATTORNEY McLENDON: Let me throw -- let me
22 throw one concept in on essential services. Those are
23 mostly services being provided by entities that have
24 the power of eminent domain. You can't regulate that.
25 They can --

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1 COUNCILMEMBER PATRICK: So my -- the
2 question I wanted to ask was do we even need to
3 have anything that addresses the allowance of sewage
4 treatment in our Code? If a utility comes along, if
5 Georgia Power, for example, wants to put a substation
6 somewhere, we don't have a way to say you can't do it.
7 So is there a benefit to having it in the
8 Code? Is there a need to have it in the Code?
9 ATTORNEY McLENDON: My answer to that would
10 be if it relates to something such as power services,
11 utilities such as electric, gas, sewage, you really
12 can't regulate it because those are authorities that
13 have the power of eminent domain and they have it as a
14 public utility.
15 And if I came in and said, "My Zoning
16 Ordinance doesn't allow it but Georgia Power said,
17 "No, I got to have a substation here," the Zoning
18 Ordinance would not regulate that.
19 COUNCILMEMBER FLEMING: Well, then, I would
20 suggest if we're going to leave it in there, then we
21 need to articulate that is for governmental,
22 municipalities or something.
23 ATTORNEY McLENDON: I think you could take
24 it out because we don't regulate, that language
25 doesn't regulate any of those guys anyhow.

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1 COUNCILMEMBER PATRICK: Right.
2 COUNCILMEMBER FLEMING: So eliminate
3 essential services or just the water and sewer pumping
4 facilities?
5 ATTORNEY McLENDON: You can eliminate them
6 both.
7 MR. COOLEY: Exactly what you struck out is
8 very good. I mean you were talking about eliminating
9 the distribution and collection lines.
10 Again, you know, if that was the case, you
11 wouldn't have sewer lines anywhere in M-1, which makes
12 no sense. Pumping stations, there are a lot of lines
13 that have to be pressurized lines. You know, we don't
14 have control on that. That's an engineering function
15 of that. So that really, as you've got it in here,
16 should be eliminated.
17 And I agree with you also that under the
18 intermediate impact facilities, water and sewage
19 plants should be struck. Now, if you strike it out of
20 the M-1 --
21 MAYOR PITTMAN: Excuse me, Joe. Would you
22 mind coming to the microphone so she can hear you
23 please?
24 MR. COOLEY: I'm sorry. Sure.
25 On the intermediate impact facilities, I

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1 agree with there is really no need to have water and
2 sewage plant in the Code. I don't know why it was put
3 in there to begin with. But I don't see any reason to
4 keep it because, again, there's not -- there's not
5 going to be, that I can see, unless there's wholesale
6 redevelopment of Doraville. And we're taking about
7 massive clearing type of stuff, not just GM, because
8 that's got facilities there.
9 You're not going to need it, number one.
10 The County does it, so there's no point in having it
11 in there. And it will eliminate all these other
12 things that fall in beyond the concept of just a big
13 water treatment plant or a sewage plant. There are
14 different levels of it.
15 So my recommendation is to take it out. I
16 don't know if you even need to have it in M-2,
17 personally --
18 COUNCILMEMBER PACHUTA: I noticed --
19 MR. COOLEY: -- but that's up to y'all.
20 COUNCILMEMBER PACHUTA: -- like Dunwoody --
21 MR. COOLEY: But if you do --
22 COUNCILMEMBER PACHUTA: -- and I think
23 Chamblee, they have it in M- -- they do list it in M-2
24 but as a conditional use. But I mean if you think
25 it's not even necessary.

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1 ATTORNEY McLENDON: If it's going to be that
2 we're talking about our Code's going to keep the
3 County from coming in with a sewer line or a pump
4 station --
5 COUNCILMEMBER PATRICK: No.
6 ATTORNEY McLENDON: -- our Code's not going
7 to be able to do that.
8 You know, the only thing I could see would
9 be if I did a huge development that was so large you
10 ended up with needing private -- some private
11 facilities on there, and my thought is that would
12 probably go out as an ancillary use to the over-
13 arching zoning just like your sewer lines are an
14 ancillary use to your house.
15 COUNCILMEMBER PATRICK: And again,
16 wouldn't -- wouldn't the County resist something like
17 that? They wouldn't want a private --
18 MR. COOLEY: County does not like that.
19 ATTORNEY McLENDON: Yeah. They'd have to be
20 on board with -- they would be the motivating factor,
21 I would imagine, because, otherwise, they're going to
22 leave it all to them.
23 COUNCILMEMBER DEAN: And what's the
24 difference between a transfer station and a plant?
25 just so I know for the future.

1 MR. COOLEY: I'd have to get you an environ-
2 mental engineer to give you the exact definition of
3 it. It's water treatment and it's sewage treatment,
4 processing and treatment. Any treatment plant is a
5 processing plant, so.

6 COUNCILMEMBER DEAN: Well, this -- I mean so
7 the facility here that was just closed down was
8 actually treating the sewage that was --

9 COUNCILMEMBER BATES: They were --

10 COUNCILMEMBER DEAN: -- that was --

11 COUNCILMEMBER BATES: They were --

12 COUNCILMEMBER DEAN: -- being brought in --

13 COUNCILMEMBER BATES: My understanding is
14 that they --

15 COUNCILMEMBER DEAN: -- or was it moving it?

16 COUNCILMEMBER BATES: My understanding is
17 that they were processing: they were separating the
18 solids from the liquids.

19 COUNCILMEMBER PATRICK: Uh-huh.

20 COUNCILMEMBER DEAN: Okay.

21 MAYOR PITTMAN: Anything else? Ms. Dean?

22 COUNCILMEMBER BATES: So based upon what I
23 was told by the plant manager or whomever he was, they
24 were processing, which qualifies them as a plant
25 versus just --

1 MR. COOLEY: And they were.

2 COUNCILMEMBER BATES: -- collecting.

3 MR. COOLEY: Whether you like it or not,
4 they were licensed by the County and State because
5 basically they dumped their water into the sewer
6 lines.

7 COUNCILMEMBER PATRICK: In order to prohibit
8 anyone else from moving in until this can go through
9 planning and zoning, could we do a moratorium or --

10 COUNCILMEMBER BATES: Could we do that
11 tonight?

12 ATTORNEY McLENDON: Eh, it's a special-
13 called meeting.

14 MAYOR PITTMAN: But isn't it kind of part of
15 this?

16 COUNCILMEMBER FLEMING: But, see, hopefully
17 this'll hit the P.C. next Wednesday.

18 COUNCILMEMBER PACHUTA: No, it can't.

19 COUNCILMEMBER PATRICK: It's got to be --

20 COUNCILMEMBER PACHUTA: It's not advertised.

21 COUNCILMEMBER PATRICK: It's got to be
22 advertised.

23 ATTORNEY McLENDON: Probably not.

24 COUNCILMEMBER FLEMING: No, next Wednesday
25 is not a public hearing --

1 COUNCILMEMBER ALEXANDER: Right here --
2 COUNCILMEMBER FLEMING: -- for the P.C.
3 COUNCILMEMBER ALEXANDER: -- in the Code
4 section: Only the business stated in the call may be
5 transacted at a special meeting except by unanimous
6 consent of all members of the Council.

7 MR. COOLEY: You could direct it to go
8 there, I suppose, unanimously.

9 COUNCILMEMBER FLEMING: But things that
10 you're working on in the Planning Commission can be
11 discussed in the Planning Commission without having
12 gone through, you know, a notice in the AJC or
13 anything.

14 ATTORNEY McLENDON: That's correct.

15 COUNCILMEMBER FLEMING: Okay. So next
16 Wednesday -- I'm not talking about Tuesday, Wednesday
17 this week. I'm talking in that next -- the following
18 Wednesday.

19 MR. COOLEY: Okay.

20 COUNCILMEMBER FLEMING: Yeah, the following
21 Wednesday, whatever date that is.

22 CLERK BRYANT: The 5th.

23 COUNCILMEMBER FLEMING: Pardon?

24 CLERK BRYANT: The 5th.

25 COUNCILMEMBER FLEMING: The 5th, December

1 the 5th they would read this particular thing of what
2 we're requesting, and then you advertise and by the --
3 Correct?

4 MR. COOLEY: That's correct.

5 COUNCILMEMBER FLEMING: Okay. So --

6 ATTORNEY McLENDON: Usually the date that
7 the rights attach is the date of the application.

8 Go ahead and pass a moratorium. If you
9 are -- if someone made a vote to put a moratorium on
10 the issuance of any permits under M-1 for water and
11 sewage plants, water and sewage facilities based upon
12 this conversation until such time as the Council could
13 further review that section.

14 COUNCILMEMBER PACHUTA: But I mean we don't
15 really issue permits. We issue occupational tax
16 placards.

17 ATTORNEY McLENDON: No application to come
18 in as that type of use, right, as a -- as a --

19 COUNCILMEMBER PACHUTA: So just that the --

20 ATTORNEY McLENDON: -- as an allowed use.

21 COUNCILMEMBER PACHUTA: -- City Clerk would
22 not issue an occupational tax placard?

23 MR. COOLEY: Right. Just the planning
24 director would not sign off on any application that
25 comes through that would go back to the City Clerk.

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1 And one advantage to that approach is just
 2 for some reason if Planning Commission doesn't take an
 3 action on it or they want to discuss it further, if
 4 they got legal questions or whatever the case may be,
 5 you're not putting yourself in a position where
 6 somebody could sneak in if gets deleted. It's just --
 7 ATTORNEY McLENDON: What I would ask you to
 8 do is let's -- if we want to pass a moratorium, based
 9 upon the language I had for 60 days for this to come
 10 back, and subject to effective this evening; and what
 11 we will do subject to coming back with an actual
 12 document that is ratified at the next meeting, I would
 13 say let's take that step.
 14 If this is a big issue, and I would rather
 15 go ahead and move forward with it, I think it is
 16 within the context of this agenda item to move forward
 17 with that. And we would bring it up if y'all wanted
 18 to make that, pass it, 60 days based on that. Next
 19 meeting I will bring you an actual moratorium, we will
 20 ratify it and re-pass that as well.
 21 MR. COOLEY: That would be the safest way
 22 for the City, I think, to keep anything else from
 23 coming in.
 24 COUNCILMEMBER ALEXANDER: I make a motion to
 25 add a moratorium to tonight's agenda.

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1 COUNCILMEMBER PATRICK: I second.
 2 MAYOR PITTMAN: Discussion?
 3 ---
 4 (No response)
 5 ---
 6 MAYOR PITTMAN: Call the roll, please.
 7 CLERK BRYANT: Councilmember Alexander?
 8 COUNCILMEMBER ALEXANDER: Yes.
 9 CLERK BRYANT: Councilmember Bates?
 10 COUNCILMEMBER BATES: Yes.
 11 CLERK BRYANT: Councilmember Dean?
 12 COUNCILMEMBER DEAN: Yes.
 13 CLERK BRYANT: Councilmember Fleming?
 14 COUNCILMEMBER FLEMING: Yes.
 15 CLERK BRYANT: Councilmember Pachuta?
 16 COUNCILMEMBER PACHUTA: Yes.
 17 CLERK BRYANT: Councilmember Patrick?
 18 COUNCILMEMBER PATRICK: Yes.
 19 MAYOR PITTMAN: Thank you.
 20 MAYOR PITTMAN: I make a motion to add a
 21 moratorium regarding issuance of occupational tax
 22 placards for zones M-1 and M-2 regarding waste water
 23 and sewerage treatment facilities.
 24 Is that sufficient?
 25 ATTORNEY McLENDON: Water and sewage plants

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1 and water --
 2 COUNCILMEMBER FLEMING: Sewer distribution
 3 and collection lines, pumping facilities for water and
 4 sewer systems, and water and sewerage plants.
 5 ATTORNEY McLENDON: I think the water and
 6 sewage plants and then we're going to eliminate
 7 essential services.
 8 COUNCILMEMBER FLEMING: Wait.
 9 ATTORNEY McLENDON: Give me two minutes.
 10 COUNCILMEMBER ALEXANDER: Yes.
 11 COUNCILMEMBER BATES: Can we take a break
 12 now?
 13 MAYOR PITTMAN: Actually, we can take a --
 14 COUNCILMEMBER FLEMING: The reason --
 15 Can I make a comment first before we take a
 16 break?
 17 In regards to the essential services, the
 18 reason why I don't feel that we should eliminate the
 19 entire thing is because when this GM project gets
 20 going, there may be a substation over there or need a
 21 substation for electrical gas -- electrical and/or
 22 gas.
 23 COUNCILMEMBER PATRICK: We wouldn't have the
 24 authority to regulate that.
 25 MR. COOLEY: That's correct.

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1 MAYOR PITTMAN: Yeah.
 2 MR. COOLEY: That really --
 3 COUNCILMEMBER PATRICK: Because that's State
 4 law. State utilities are --
 5 Sorry, Joe. Go ahead.
 6 MR. COOLEY: That really is something we --
 7 it should not have been in there in the first place
 8 because we can't regulate it.
 9 COUNCILMEMBER FLEMING: Okay.
 10 MR. COOLEY: It's --
 11 COUNCILMEMBER ALEXANDER: I assume we're off
 12 break now?
 13 COUNCILMEMBER FLEMING: My apologies. My
 14 apologies.
 15 MAYOR PITTMAN: Cecil, go ahead. What were
 16 you saying?
 17 COUNCILMEMBER ALEXANDER: Well, I was in the
 18 process of making a motion and I was interrupted.
 19 MAYOR PITTMAN: Do you need to add any-
 20 thing?
 21 ATTORNEY McLENDON: Sidebar.
 22 COUNCILMEMBER ALEXANDER: Yes.
 23 ATTORNEY McLENDON: I think the water-and-
 24 sewage-plants language is what we're primarily
 25 concerned with, not the water storage facilities.

1 MR. COOLEY: Right, and not -- not the lines
2 because --
3 ATTORNEY McLENDON: Water, sewage --
4 MR. COOLEY: -- you can effectively not --
5 ATTORNEY McLENDON: -- plants.
6 MR. COOLEY: -- allow any new lines --
7 THE REPORTER: I'm sorry, I can't get you
8 both.
9 ATTORNEY McLENDON: Water and sewage plants.
10 COUNCILMEMBER ALEXANDER: Would you like to
11 try to read back the motion I was in the process of
12 making, please, or do we just want to start from
13 scratch?
14 Okay. I make a motion to enter in a 60-day
15 moratorium for issue of any certificates of occupancy
16 or occupational tax placards in Zones M-1 and M-2
17 regarding any water and sewerage treatment plants,
18 transfer stations, facilities, etc.
19 Is that sufficient?
20 COUNCILMEMBER ALEXANDER: Thank you.
21 MAYOR PITTMAN: Do I get a second?
22 ATTORNEY McLENDON: (Imperceptible)
23 COUNCILMEMBER PATRICK: Could I --
24 COUNCILMEMBER ALEXANDER: Oh, wait a minute.
25 He stopped me again.

1 point. We have a short Planning Commission, and if
2 one person's out, we don't have a quorum and can't
3 act. So I think it's a very --
4 COUNCILMEMBER ALEXANDER: I modify my
5 original motion to go from 60 to 90 days.
6 COUNCILMEMBER PATRICK: Second.
7 MAYOR PITTMAN: Discussion?
8 ---
9 (No response)
10 ---
11 MAYOR PITTMAN: Call the roll, please.
12 CLERK BRYANT: Councilmember Alexander?
13 COUNCILMEMBER ALEXANDER: Yes.
14 CLERK BRYANT: Councilmember Bates?
15 COUNCILMEMBER BATES: Yes.
16 CLERK BRYANT: Councilmember Dean?
17 COUNCILMEMBER DEAN: Yes.
18 CLERK BRYANT: Councilmember Fleming?
19 COUNCILMEMBER FLEMING: Yes.
20 CLERK BRYANT: Councilmember Pachuta?
21 COUNCILMEMBER PACHUTA: Yes.
22 CLERK BRYANT: Councilmember Patrick?
23 COUNCILMEMBER PATRICK: Yes.
24 MAYOR PITTMAN: Thank you. And we're going
25 to take a three-minute break.

1 COUNCILMEMBER PACHUTA: Do you want her to
2 have "etc." in there?
3 ATTORNEY McLENDON: Transfer facilities?
4 COUNCILMEMBER ALEXANDER: Yes, because this
5 was a type of transfer facility.
6 A sewage transfer facility?
7 COUNCILMEMBER ALEXANDER: Okay. Specifying
8 sewerage transfer facility. Are we good now?
9 Going once, going twice.
10 MAYOR PITTMAN: Do I get a second?
11 COUNCILMEMBER PATRICK: Second.
12 MAYOR PITTMAN: Discussion?
13 ---
14 COUNCILMEMBER PATRICK: Could we bump that
15 from 60 to 90 days just in case there's a lack of
16 quorum at the Planning Commission or some other
17 unknown foreseen problem, and that just gives us an
18 extra time frame, if no one has an objection to that?
19 COUNCILMEMBER ALEXANDER: Are you okay with
20 90 days?
21 ATTORNEY McLENDON: In this context, I think
22 I'd be okay with 90 days.
23 Joe, would the 90 days be beneficial to get
24 through this whole process?
25 MR. COOLEY: I think that's a very good

1 ---
2 (Brief recess)
3 ---
4 MAYOR PITTMAN: And the final agenda item
5 tonight is the Review Sanitation Bids, Ms. Dean. I
6 believe everybody had theirs in their box this
7 weekend.
8 COUNCILMEMBER DEAN: Well, I think just as
9 you know, I've been talking about this for a number of
10 months, and the year is ending, and so we need to make
11 a decision on what we are going to do.
12 I spoke to legal today and I was a bit
13 confused because the contracts, they're not legally
14 binding for any term over one year, anyway, and so I
15 wasn't really -- I wasn't really certain why, because
16 we can't -- as a body, we can't encumber the next
17 administration. So the five-year thing struck me.
18 But after speaking with Cecil, he confirmed
19 that the contracts could only be one year at a time. I
20 mean we can have a five-year contract, but at the end
21 of every year, we have the right to terminate.
22 So I was a bit confused over the differences
23 in the terms and conditions of the contracts. Same
24 company's two years versus five years because they
25 were -- they were better contracts with five years.

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1 But what's to prevent us from saying, okay, great.
2 We're going to take this five-year contract, which is
3 a much better deal, and then at the end of two years
4 get rid of them and go with someone else. Right?
5 Okay. So anyway, that's something that we
6 should think about because that is -- that's the law,
7 and I have -- I've looked over these things and I've
8 heard -- and I wish we had more time on this because
9 I've heard from a number of people -- and it's
10 definitely true in our house. I need a bigger
11 receptacle for recycling than I do for garbage. I
12 have a lot more recycling than I do garbage, and these
13 small -- these small containers, these 18-gallon
14 containers hold nothing. So we're still going, going
15 to the recycling bins near the park as well as putting
16 it out at the street.
17 That being said, I read through these things
18 and I found a lot of good things with all of them.
19 BFI offers two 95-gallon containers, one for garbage
20 and one for recycling.
21 I liked with WastePro, they have -- they
22 have a complaints and inquiry section that the
23 customers can log onto and actually it's tracked so we
24 can see how the company's actually doing.
25 BFI or Republic, they -- I like them. They

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1 have 95-gallon recyclable containers, as I said.
2 Waste Management I liked because they have a
3 recycle bank which is something that really appealed
4 to me, because not only is the incentive to have
5 people recycle, but the incentive is that they're
6 getting some -- some kind of, you know, recycling
7 dollars that they're able to redeem at certain stores,
8 etc., which is, I think, great, because it, again,
9 provides incentive for the people. And they also got
10 great recommendations. They're on the Forbes Top 20
11 list and they were also called one of the world's most
12 ethical companies from a magazine called Ethisphere,
13 whatever that is. And with Waste Management --
14 Brian, first, I'd also like to really thank
15 you for -- for putting together that summary for us.
16 That was really, really helpful, and I -- you know, I
17 really appreciate that, and hopefully we can -- we can
18 have something, you know, more like that when we get
19 bids and contracts in.
20 But it's \$12.63 a week with a 95-gallon
21 recycling pickup every other week versus \$13.63 for
22 weekly pickup for an 18-gallon container. So that's
23 something to take into consideration.
24 Unity Southern, I like their education plan.
25 They pledge \$2,000 per year to educate the community

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1 on the benefits of recycling, which is good.
2 And also we have Advanced, which is also
3 good. The advantage to Advanced is that we are
4 running out of time and they were the least expensive
5 providers.
6 That's what I have, and I'd like some
7 discussion on how we should go about doing this
8 because I have a lot of questions that I would like to
9 get answers to before going further on this, and
10 apparently we had interviews in the past with these
11 people so we could have a more direct communication,
12 but I need to see how -- I mean I would like --
13 The contract ends at the end of the year;
14 right?
15 MAYOR PITTMAN: Uh-huh.
16 COUNCILMEMBER DEAN: So this is something
17 too, a side note, that we could perhaps get the City
18 -- because they know the contracts are expiring,
19 perhaps something could be put into place to get the
20 RFPs out, to come back to us, particularly after it's
21 been stated that this is what we want to do. And this
22 was stated -- I think Mr. Bates supported me on this
23 -- months and months ago -- just to see what's out
24 there and have -- have the Clerk or someone here on
25 the administrative side just do it, because -- because

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1 now we are running out of time and we're going to be
2 rushed to make a decision, and that might even
3 influence the decision we make.
4 MAYOR PITTMAN: Okay. Ms. Alexander?
5 COUNCILMEMBER ALEXANDER: Regarding the
6 recycling containers, I personally have three
7 containers that I put out. I mean we're not limited
8 to pickup of one 18-gallon tote. I've started
9 actually separating mine because we have an individual
10 that is recycling our aluminum cans in Oakcliff
11 without our permission. So I physically take those
12 and put those in the bins at Honeysuckle.
13 But there's -- I guess I don't know if
14 people are under the impression that they're limited
15 to the 18-gallon tote, but they can have more than one
16 I assume that if we had a trash can, we could stick a
17 "recycled" sticker on it and put it out there and they
18 would take it. It's just they happen to furnish the
19 18-gallon totes. I myself can't fit a 95-gallon trash
20 can in my garage, so that's why I have a 65-gallon,
21 and I couldn't fit the -- No, I guess I could make
22 room for the other one. I just don't want people to
23 be misled that that's all they can recycle is that one
24 tote.
25 I guess my main concern is I think I sent

1 out the RFP in June. It was the RFP that we had done
2 for the previous cycle. And I wasn't going to take up
3 the sanitation sword since I carried it the last time,
4 and that's why I shared the RFP back then, and I don't
5 think it got put on an agenda until I think it was
6 October.

7 My concern in changing right now is we are
8 about to bring on board new citizens, you know,
9 December 31 at 12:01 or whatever time it is and I
10 don't want us to be a combination of transitioning to
11 a new carrier or to a new service provider at the same
12 time trying to bring new people into the fold. I
13 guess that's one of -- one of my concerns.

14 MAYOR PITTMAN: Mr. Bates?

15 COUNCILMEMBER BATES: A number of the
16 respondents indicated that they'd have multiple bin
17 sizes, so I think that's a benefit. And whomever we
18 select, we should make sure the residents know that if
19 they want to swap out and get a larger recycle tote
20 and a smaller waste tote, then that's an option for
21 them.

22 I agree with Ms. Alexander that the timing
23 is challenging right now especially with the
24 annexation coming in, and I do wish that we had had
25 more time to review and interview.

1 Based upon the pricing that's been provided
2 to us with the breakdown, my preference would be to
3 renew with Advanced at their bundled price. And I do
4 like that we added in an option for a second weekly
5 pickup to consider. I don't know if I want to enact
6 on that, but I did like having it here.

7 MAYOR PITTMAN: Ms. Pachuta?

8 COUNCILMEMBER PACHUTA: Yeah. I'll have to
9 apologize because we got these Wednesdays, and with
10 the holidays, I was not able to come and pick it up so
11 I still -- it was still sitting in my box. So the
12 only thing I really have to go by is I appreciate
13 Brian putting this chart together for us.

14 And so solely going on the chart, I would
15 say go with Advanced because of the price and then
16 also again because of the timing and bringing on the
17 new areas in such a short period of time and getting
18 that set up, but.

19 MAYOR PITTMAN: Okay. Mr. Patrick?

20 COUNCILMEMBER PATRICK: Is there any time
21 frame at which these bids would no longer be relevant
22 and we have to rebid?

23 ATTORNEY McLENDON: I don't think there's a
24 period of award that's set in it. You probably would
25 reach a point where I'm not sure you could --

1 COUNCILMEMBER PATRICK: The contractor may
2 not honor those?

3 ATTORNEY McLENDON: -- (imperceptible) at a
4 certain point, but I'm not sure it's going to be set
5 out in writing.

6 COUNCILMEMBER PATRICK: Okay.

7 ATTORNEY McLENDON: So you have a pending
8 RFP that's been received. So the issue -- you know,
9 you're either going to say I'm not going to award and
10 reissue or we are awarding, and this for various
11 reasons.

12 And really the thing that we've got to do is
13 determine what's our process of analysis analysis, and
14 we determine to just renew.

15 You know, I think that's sort of where we're
16 poised right now. And I'm hearing there's already
17 been a lot of good thought put to the decision and
18 it's just sort of a -- to me, I'm hearing process to
19 the finish-line decision, one way or another on it.

20 MAYOR PITTMAN: Thank you. Ms. Fleming?

21 COUNCILMEMBER FLEMING: Brian, I do
22 appreciate you doing this as well. What's the second
23 year, second pickup second year?

24 COUNCILMEMBER BATES: That's the second
25 pickup a week for a two-year contract and --

1 COUNCILMEMBER FLEMING: Oh, for a two-year
2 contract.

3 COUNCILMEMBER BATES: Yeah.

4 COUNCILMEMBER FLEMING: Okay. All right.

5 First of all, Ms. Alexander had put forth
6 several years ago us trying to correct our Sanitation
7 Code. Okay? So it's incorrect to begin with, and it
8 lists how many pickups we're going to have a week and
9 how many bundles of yard trash we're going to have and
10 allow to be out there and so forth and so on. So
11 that's still a challenge for us when we are trying to
12 select a waste removal company.

13 And in regards to the yard waste, during the
14 season of the year as we are in, I believe that ten
15 per week of the large bags is not enough, so --

16 COUNCILMEMBER BATES: (Imperceptible)

17 COUNCILMEMBER FLEMING: I'm sorry?

18 COUNCILMEMBER BATES: It's only eight.

19 MAYOR PITTMAN: It is eight.

20 COUNCILMEMBER FLEMING: I'm sorry?

21 COUNCILMEMBER BATES: It's only eight.

22 MAYOR PITTMAN: It's eight but they will --

23 COUNCILMEMBER FLEMING: My apologies:

24 eight.

25 But I believe, if I'm not mistaken, Advanced

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1 has indicated that --

2 COUNCILMEMBER BATES: Can you hold on for

3 one moment, please?

4 (Pause) Okay. Sorry. Just there was a

5 ruckus happening outside, and I thought it was people

6 talking but it's really silence.

7 COUNCILMEMBER PATRICK: Sounds like a cat.

8 COUNCILMEMBER PACHUTA: It sounds like a

9 siren dying.

10 MAYOR PITTMAN: Broken siren.

11 COUNCILMEMBER FLEMING: Do we have an

12 animated toy in one of the boxes?

13 MAYOR PITTMAN: Pull it up here, did you

14 say?

15 COUNCILMEMBER FLEMING: No. I'm serious.

16 COUNCILMEMBER ALEXANDER: I don't think --

17 COUNCILMEMBER FLEMING: It's running out of

18 batteries?

19 COUNCILMEMBER ALEXANDER: -- it's so,

20 although I have one at my house I would love to throw

21 in there. Even when I turn on the light, it goes off.

22 COUNCILMEMBER FLEMING: But anyway --

23 COUNCILMEMBER BATES: Sorry. I didn't mean

24 to interrupt.

25 COUNCILMEMBER FLEMING: That's quite all

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1 right.

2 But with the eight bags and if I'm not

3 mistaken, Advanced has committed to unlimited number

4 of yard waste bags, I believe, and so I am definitely

5 in favor of that.

6 And of course the pricing appears to be

7 quite in line or even better than what we have been

8 getting. We just need to make sure that what we're

9 asking for, that we are going to be getting, whether

10 it's we're going to have two -- two weekly pickups,

11 etc., that it's definitely spelled out, so.

12 And if they're -- as Ms. Dean said, if

13 they're willing to offer us additional collection

14 containers for recycling, then that would be fine with

15 me as well.

16 MAYOR PITTMAN: Okay. Ms. Dean?

17 COUNCILMEMBER DEAN: Yeah. I did not know

18 that it didn't matter, because the contract stipulates

19 18-gallon or 36 items of recycling, and it specif-

20 ically states that. The others did not say that.

21 The other thing with Waste -- I mean, I'm

22 sorry, with Advanced is the fuel surcharge or the

23 clause to allow an increase based on the fuel. It's

24 something the Monday before the ending of the --

25 right, the last -- by the first -- the last Monday

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1 before the end of the contract, etc.

2 COUNCILMEMBER ALEXANDER: ^{I think we froze}

3 that in the last contract because that caused us

4 issues before. So I think the last contract had froze

5 that actually, the fuel surcharge.

6 COUNCILMEMBER DEAN: Okay. All right.

7 Because that was -- it was just such a weird time.

8 Like the average of the year would make more sense

9 than just that one figure.

10 And again, because we are getting a city

11 manager, even if we can have a one-year contract -- I

12 mean we can, because we can change it at the end of

13 next year legally -- I think that would be something

14 that we should look at, and then with the implemen-

15 tation of the new city manager, we can go through this

16 process and do it properly with more time next year.

17 COUNCILMEMBER ALEXANDER: ^{On that note, I}

18 was speaking to Mayor Pittman regarding that and I had

19 spoken to -- when I did the RFP two years ago, I had

20 spoken to the public works director at Norcross

21 because he actually wrote their RFP for sanitation

22 services. So I think that this should be removed off

23 of this dais and it should be handled by the public

24 works --

25 MAYOR PITTMAN: Absolutely.

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1 COUNCILMEMBER ALEXANDER: ^{-- director and}

2 the city manager.

3 MAYOR PITTMAN: Absolutely.

4 COUNCILMEMBER ALEXANDER: ^{And then they come}

5 to us and say, "Okay. We've sent out the RFP. These

6 are the responses."

7 COUNCILMEMBER BATES: ^{And they've reviewed}

8 them and they make a recommendation because that's

9 their job.

10 COUNCILMEMBER PACHUTA: Yes.

11 COUNCILMEMBER ALEXANDER: ^{I don't want to be}

12 the garbage and sewer queen.

13 COUNCILMEMBER DEAN: ^{And the other thing is}

14 with Honeysuckle Park, the recycling, some of that is

15 Dekalb County; right?

16 COUNCILMEMBER BATES: There are two.

17 COUNCILMEMBER ALEXANDER: ^{Yeah. And we have}

18 no idea, even Ms. Stephens who was here since time

19 began had no idea where those Dumpsters came from.

20 They may have come with the park. We got the park in

21 I think 1982 or whatever.

22 COUNCILMEMBER BATES: Yeah. There's two

23 paper.

24 COUNCILMEMBER ALEXANDER: ^{For cardboard.}

25 COUNCILMEMBER BATES: Cardboard and paper

1 only. The other three are ours that are on the right-
2 hand side.
3 COUNCILMEMBER DEAN: Okay.
4 COUNCILMEMBER BATES: And those are what's
5 quoted in all the RFPs.
6 COUNCILMEMBER ALEXANDER: All the big ones.
7 COUNCILMEMBER BATES: The big ones.
8 COUNCILMEMBER DEAN: Could we get our logo,
9 could we get our City logo on recyclable containers
10 like other cities have?
11 COUNCILMEMBER DEAN: Hey, we can ask. All
12 they can do is say no.
13 COUNCILMEMBER PACHUTA: Yeah.
14 COUNCILMEMBER ALEXANDER: I think the only
15 thing is we don't -- I don't know that we get the same
16 ones back every time. I don't know.
17 COUNCILMEMBER FLEMING: Are you talking
18 about our individuals or the large ones out there?
19 COUNCILMEMBER DEAN: The large ones.
20 MAYOR PITTMAN: It's a thought.
21 Okay. If there is nothing additional, does
22 someone wish to make a motion?
23 COUNCILMEMBER DEAN: Well, first, do we know
24 if we can have a one-year contract rather than a two-
25 year?

1 ATTORNEY McLENDON: Has to expire at the end
2 of each year.
3 COUNCILMEMBER ALEXANDER: Right, but I'm
4 saying there was no option to have them quote one
5 year.
6 COUNCILMEMBER PACHUTA: And I'm assuming
7 even though we have that option to not renew second
8 year, there are still certain assumptions going on
9 where when they're bidding, they're kind of assuming
10 we're going to -- unless there's just something
11 strange happens, we're going to have that second year
12 even though we do still retain that right.
13 So I would think if we had specified one
14 year, we might have had higher -- you know, probably
15 would have had higher rates, so.
16 ATTORNEY McLENDON: I think that what you're
17 talking about is awarding a two-year contract with the
18 legal requirement that at the end of each year, it
19 expires and the opportunity is there to not renew.
20 That's with all contracts across the board, Georgia
21 law.
22 COUNCILMEMBER FLEMING: So presently you're
23 working without a contract; correct?
24 COUNCILMEMBER ALEXANDER: No. It's in
25 effect until the end of this year.

1 MAYOR PITTMAN: What are you going to say,
2 Cecil?
3 ATTORNEY McLENDON: What you would do is I
4 think -- you know, a couple -- We've got to look to
5 the RFPs and what was submitted as the bids.
6 Any contract. And I think any of our
7 contractors probably know that it is a -- each
8 contract must expire at the end of each year.
9 What you would do on a two-year or a five-
10 year contract is have the number of potential auto-
11 matic renewals.
12 COUNCILMEMBER DEAN: Uh-huh.
13 ATTORNEY McLENDON: The issue you probably
14 need, and one of the things that happens if there is
15 ambiguity of not quite understanding what's on the
16 table, a lot of times, it helps to have the discussion
17 to make sure you're clear on what everyone is offering
18 before you would award that contract.
19 So I mean if it is on the table for five-
20 year renewable, it has to be renewable. But, you
21 know, my question would be if you're preparing to
22 award it, we need some detail to know exactly what
23 we're awarding, to whom and on what basis.
24 COUNCILMEMBER ALEXANDER: Well, the RFP was
25 specifically written for a two-year and five-year.

1 COUNCILMEMBER FLEMING: No.
2 COUNCILMEMBER DEAN: It's renewable at the
3 end of the year.
4 COUNCILMEMBER FLEMING: Mr. McLendon.
5 COUNCILMEMBER ALEXANDER: Oh. I thought you
6 were talking about trash.
7 ATTORNEY McLENDON: I think I'm month to
8 month. Just let me know.
9 MAYOR PITTMAN: Okay. So that's not --
10 that's not the discussion tonight, Ms. Fleming.
11 COUNCILMEMBER FLEMING: No, but my point was
12 is that when his expired, we had the option to go
13 forth with a document to state renewal or go out for
14 RFP.
15 MAYOR PITTMAN: Okay.
16 COUNCILMEMBER BATES: Yeah. I'm going to
17 make a motion to award the sanitation contract and a
18 two-year agreement to Advanced Disposal pursuant to
19 their RFP response with a bundled price of \$10.50
20 which is inclusive of curbside pickup of garbage,
21 curbside pickup of recycling, curbside pickup of yard
22 waste in unlimited and containerized quantities,
23 curbside pickup of bulk white goods as designated and
24 requested once per week.
25 Ms. Alexander, did you have something you

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1 want to add?
 2 COUNCILMEMBER ALEXANDER: Yeah.
 3 COUNCILMEMBER BATES: Go ahead.
 4 COUNCILMEMBER ALEXANDER: I don't remember
 5 the language that's in the existing contract regarding
 6 the fuel surcharges frozen for the duration of the
 7 contract.
 8 ATTORNEY McLENDON: What I would do is make
 9 the motion subject to the approval of legal to be put
 10 into the format, and that's to be put into the format
 11 of the existing contract.
 12 COUNCILMEMBER BATES: So moved. Or amended,
 13 modified.
 14 MAYOR PITTMAN: Do I get a second?
 15 COUNCILMEMBER ALEXANDER: Second.
 16 MAYOR PITTMAN: Discussion?
 17 COUNCILMEMBER FLEMING: Yes. I wanted to
 18 find out were we not going to discuss or consider the
 19 second pickup.?
 20 COUNCILMEMBER BATES: I think that's a nice
 21 option, but from a budgetary standpoint unless we're
 22 wanting to raise sanitation fees on residents --
 23 COUNCILMEMBER ALEXANDER: Because we're not
 24 going to be getting reimbursed for the sanitation for
 25 the new area until August.

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1 COUNCILMEMBER DEAN: And the other question
 2 I have is do we pay before services have been rendered
 3 or after they've been rendered?
 4 COUNCILMEMBER ALEXANDER: I think we're
 5 billed quarterly, I think. Monthly?
 6 MAYOR PITTMAN: Monthly.
 7 COUNCILMEMBER DEAN: Before or after?
 8 MAYOR PITTMAN: It's after.
 9 Right, Sandra? After?
 10 COUNCILMEMBER DEAN: Yeah. The language of
 11 the 18-gallon/36 items recycling, could that be
 12 clarified in the contract? because that's something
 13 that I want to make -- that's a big deal to me, a very
 14 big deal.
 15 COUNCILMEMBER BATES: Yeah. The proposal
 16 stipulates that other sizes are available upon request
 17 for both the garbage container and the recycling
 18 containers.
 19 COUNCILMEMBER DEAN: At additional fees or
 20 not?
 21 COUNCILMEMBER ALEXANDER: Doesn't state
 22 that.
 23 COUNCILMEMBER BATES: It doesn't state. Mr.
 24 Harrell is here. We can ask him.
 25 COUNCILMEMBER DEAN: I think that would be

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1 kind of appropriate.
 2 ATTORNEY McLENDON: Yeah, I'd like to . . .
 3 MAYOR PITTMAN: Okay.
 4 COUNCILMEMBER BATES: Fine. Withdraw.
 5 MAYOR PITTMAN: Okay. We can clarify that,
 6 though. I mean we can find out once --
 7 COUNCILMEMBER BATES: I mean the contract's
 8 going to come back to us to --
 9 MAYOR PITTMAN: Yes, for approval.
 10 COUNCILMEMBER BATES: -- to finalize.
 11 ATTORNEY McLENDON: Yes, we'll get the
 12 contract back to finalize.
 13 COUNCILMEMBER BATES: Once y'all get
 14 together and negotiate and do all that stuff. So this
 15 is just to award it and send it to legal for
 16 finalization; it'll come back to us for final.
 17 MAYOR PITTMAN: Okay. Motion and a second.
 18 Any more discussion?
 19 COUNCILMEMBER BATES: Did we get a section?
 20 MAYOR PITTMAN: Yes, Maria did.
 21 COUNCILMEMBER ALEXANDER: Sewer and garbage
 22 on her gown.
 23 MAYOR PITTMAN: Call the roll, please.
 24 CLERK BRYANT: Councilmember Alexander?
 25 COUNCILMEMBER ALEXANDER: Yes.

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1 CLERK BRYANT: Councilmember Bates?
 2 COUNCILMEMBER BATES: Yes.
 3 CLERK BRYANT: Councilmember Dean?
 4 COUNCILMEMBER DEAN: I feel very pressured
 5 because I don't feel that this process was done
 6 appropriately. No offense. I'm going to say no.
 7 CLERK BRYANT: Ms. Fleming?
 8 COUNCILMEMBER FLEMING: Yes.
 9 CLERK BRYANT: Councilmember Pachuta?
 10 COUNCILMEMBER PACHUTA: Yes.
 11 CLERK BRYANT: Councilmember Patrick?
 12 COUNCILMEMBER PATRICK: Yes.
 13 MAYOR PITTMAN: Okay. Thank you.
 14 Motion to adjourn?
 15 COUNCILMEMBER PACHUTA: So moved.
 16 COUNCILMEMBER ALEXANDER: Second.
 17 MAYOR PITTMAN: Discussion?
 18 ---
 19 (No response)
 20 ---
 21 MAYOR PITTMAN: Call the roll, please.
 22 CLERK BRYANT: Councilmember Alexander?
 23 COUNCILMEMBER ALEXANDER: Yes.
 24 CLERK BRYANT: Councilmember Bates?
 25 COUNCILMEMBER BATES: Yes.

1 CLERK BRYANT: Councilmember Dean?
2 COUNCILMEMBER DEAN: Yes.
3 CLERK BRYANT: Councilmember Fleming?
4 COUNCILMEMBER FLEMING: Yes.
5 CLERK BRYANT: Councilmember Pachuta?
6 COUNCILMEMBER PACHUTA: Yes.
7 CLERK BRYANT: Councilmember Patrick?
8 COUNCILMEMBER PATRICK: Yes.
9 MAYOR PITTMAN: Okay. Thank you. Have a
10 good evening.

11 ---
12 (Meeting adjourned at approximately 9:00 p.m.)
13 -o0o-

1 C E R T I F I C A T E
2 STATE OF GEORGIA]
3 COUNTY OF DEKALB]
4 I hereby certify that the foregoing transcript
5 was taken down as stated in the caption and the
6 proceedings were reduced to typewriting under my
7 direction and control.
8 I further certify that the transcript is a true
9 and correct record of the said proceedings.
10 This the 12th day of December 2012.

11
12
13 Theresa Bretch, CCR
14 Permit No. B-755

15
16
17 [SEAL]
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