Attendance: Mayor Childs, Mayor Pro Tempore Ott, and Councilmembers Courtney, Johnson, Pellegrino, Samples and Stevens were in attendance. A quorum was present. Others present: Administrator Fellner and Town Clerk Herrmann. Attorney Ken Moss was also present representing the town.

1. CALL TO ORDER. These minutes are verbatim due to the nature of the meeting.

Mayor Childs: (Gavel.) I call this meeting to order. Before I get started, I would like to introduce Mr. Ken Moss. He is a legal representative of the town and not any individual on either side. He’s here to tell council and advise council what they can and can’t do and what they can and can’t say. So, if Mr. Moss, if you would like to start off and kind of give council some direction.

Mr. Ott: Mr. Mayor, please. Mayor Childs: Mr. Ott.

Mr. Ott: This attorney here has represented you and nobody else here on this council many times. I don't recommend that he speaks for this town. We have an attorney, and that attorney represents us, and he was approved by council. Mr. Moss has not been approved by council.

Mayor Childs: Well, Mr. Moss has not ever represented me in anything. Mr. Moss, would you like to speak please. Our attorney was, because of a conflict of some sort was not able to do this, (**multiple speakers)

Mr. Stevens: Point of order, point of order, Mr. Mayor. It that not amending the agenda?

Mr. Ott: It's not on the agenda.

Mr. Stevens: It is not on the agenda for Mr. Moss to speak.

Ms. Herrmann: Mr. Mayor, as moderator you have authority to recognize any one you wish. So, if you would like Mr. Moss to speak, it is perfectly correct within Parliamentary Procedure.

Mr. Courtney: Mr. Mayor? Mayor Childs: Mr. Courtney.

Mr. Courtney: Is this attorney being paid by the taxpayers today?

Mayor Childs: Yes.

Mr. Courtney: Without consensus of council?

Mayor Childs: We didn’t need consent of council.

Mr. Ott: Basically, that may be why we’re here today.

Ms. Herrmann: Mr. Mayor. Mayor Childs: Ms. Herrmann.

Ms. Herrmann: The council has budgeted money for attorney representation.
Mr. Ott: Excuse me.

Mayor Childs: No, excuse me, Mr. Ott. She's speaking.

Mr. Ott: But the town clerk is not a member of council.

Mayor Childs: She's advising me of (**two speaking at once.**)

Mr. Ott: No, she's not advising anybody at this time.

Mayor Childs: She's advising me, Mr. Ott.

Mr. Ott: I don't care (**two speaking at once.**)

Mayor Childs: (Gavel.) I don't care what you say. Proceed.

Mr. Ott: Hit it again. Enough. This attorney is being paid for by the town taxpayers. We have a man named Michael Battle that was approved by council to be our representative. Council has not approved Mr. Moss.

Mayor Childs: Ms. Fellner, would like to address that particular issue?

Ms. Fellner: No, sir.

Mayor Childs: Mr. Moss, would you please. (Audience crying out can't hear…) He'll get to the microphone.

Mr. Moss: (**Not using microphone.) I'll be happy to address that. It is my opinion that Mr. Battle was unable to be here today (Audience complaints: can't hear)

Mayor Childs: He'll get to the microphone, just give him, Mr. Moss. (**several speaking at once.)

Mr. Moss: I think most of y'all on council…

Mr. Ott interrupted: I stand in objection.

Mayor Childs: Well, you can stand all day.

Mr. Ott: I can, too.

Mr. Moss: Councilman Ott to address your particular (**two speaking at once.)

Mr. Ott: I stand in objection, sir.

Mayor Childs: Mr. Ott, would you please be seated. This is a business meeting. (Mr. Courtney also stood, but did not make any comment.)

Mr. Moss: Mr. Battle was not able to be here today. Mr. Battle was not able to be here today. I understood that communication with Mr. Battle was had. When you are an attorney advising clients, you get into situations sometimes when you're not able to offer candid and unbiased advice to a client. When that happens, it's better for you to decline to be involved. And it is my understanding that is what occurred when I got the call if I would be here today. I agreed to be here today for the town, and I
don't, I do not have an agenda here today on behalf of any party that I understand to be involved or affected. So, I respect your objections, but trust me when I tell you that the taxpayers are my only client here. I did look at the agenda. I had some concerns when I saw the agenda. Not about the ultimate objective, not about decisions of the council that four members of council have asked this council to have a special meeting; y'all have that right to have that special meeting. The council has that obligation to have it when it's called by four members, and y'all will have a meeting, and y'all will have a vote, I assume, if somebody makes a motion. So, my appearance today is not to try to interfere with that or to try to change that in any way whatsoever. However, when I read the agenda what concerned me was you have public comments noted on the agenda [but] the only item is a personnel matter. It is historically this council's policy when I was here before and as I understand it now, not to take public input on personnel matters. There is a very important reason not to do that, because when you consider public employees there are consequences associated with this very action that could be long-reaching and they could be long-lasting, and they could be dire. So we don't generally have public input or public meetings concerning personnel matters. They're often taken in executive session. I've shown some of you the case that arose out of Myrtle Beach. It was Hubanks v Smith. The city manager there was sued after a terminating some building officials. This dates back in the 80's. Well, there the Supreme Court gave us, the Supreme Court of South Carolina gave us pretty clear guidance that when disciplinary actions are taken against public officials or public employees they have a liberty interest that could be affected. As a result of that they have a right to present accuser or to refute back allegations made against them. But, this is a Town Council meeting. This is not an adversary hearing, and so in this particular case, Ms. Fellner would not have an opportunity to refute any allegations made by public comment nor by the council. There could be such a hearing, but that's not what a Town Council meeting is. So, my counsel to this body is perhaps you should not have public input on a personnel matter, because it would mark a significant change in policy from what this town normally does, and is just a bad idea. I would encourage you to have the deliberations that you want to have and to have the remarks that the councilmembers want to have in a closed executive session meeting, because in doing that you protect the persons involved. Now, of course, you can't make a decision in executive session, if you deliberate in executive session or you have your comments in executive session, any decision you make has to come out here and be done in public.

Mr. Ott interrupted:  We decided, we decided (**two speaking at once).

Mayor Childs:  (Gavel.) I don't care. Mr. Moss (**several speaking at once.) Mr. Moss.

Mr. Ott:  Council has decided before the start of it to amend our agenda.

Mr. Stevens:  Mr. Mayor, Mr. Mayor, Mr. Mayor, may I be recognized?

Mayor Childs:  No, not until Mr. Moss completes his statement.

Mr. Stevens:  I think he's finished.

Mr. Ott:  Well, thank you very much.

Mr. Moss:  Let me tell you what I brought today. Based on the agenda that's before you, I did go into your Code of Ordinances and I printed out the provisions concerning your administrator, and I have them for each of the councilmembers. You certainly have the authority to entertain decisions that are on your agenda. I have these just for your reference, and I'll be happy to pass them out. They're just right out of your Town Code of Ordinances. And, with that, I will be ready to answer any questions any of you may have.

Mr. Stevens:  In order to protect the town and the citizens, I would like to amend the agenda to remove public comments from the; remove public comments.
Mayor Childs: Do I have a second?

Mr. Ott: I'll second that.

Mayor Childs: All those in favor say aye. All members said aye. Mayor Childs: All opposed no. There was no response. It is the opinion of the chair the ayes have it. MOTION CARRIED.

2. PUBLIC COMMENTS – AGENDA ITEMS. (3 minutes). Removed by approved motion.

Mr. Stevens: Mr. Mayor. Mayor Childs: Mr. Stevens.

3. BUSINESS. To discuss the demotion, letter of reprimand for unacceptable conduct and violation of duties or complete dismissal of the administrator.

Mr. Stevens: I’d like to make a further amendment, I would like to move to enter into executive session pursuant to the Freedom of Information Act Section 30-4-70(A)(1) to discuss employment appointment, compensation, promotion, demotion, discipline or release of an employee, specifically the town administrator.

Mayor Childs: Is there a second.

Mr. Pellegrino: I second.

Mayor Childs: All those in favor say aye. All members said aye. Mayor Childs: All opposed no. There was no response. Mayor Childs: Opinion of the chair, the ayes have it. Motion Carried. (Motion to enter executive session made at 11:08 p.m.)

Mr. Courtney: Mr. Mayor, I’d like to say something please. Mayor Childs: Mr. Courtney.

Mr. Ott: ** discussion.

Mr. Courtney: Mr. Moss, I appreciate you coming here. I thank you very much. I wish counsel would’ve known, they were given notice, but none was given till this last minute. This council was going to amend this agenda, so that was going to happen anyway. So, how much did it cost us to have you on retainer here today?

Mr. Moss: Councilman Courtney, my services are billed by the hour and that (**). The normal amount for a client is $300 an hour. I spent about an hour and half preparing yesterday after I got the call. (**Audience complaints: cannot hear.)

Mr. Courtney: I’m sorry. Could you answer that in the mike, sir? Thank you. Thank you.

Mr. Moss: Councilman Courtney, my services and my firm's services are provided on an hourly fee basis. The total cost is unknown, because I don't know how long I'll be here or how many hours will be involved. I spent about an hour and a half yesterday preparing for today's meeting, and I've come this morning.

Mr. Courtney: I'm sorry, Mr. Moss. You have to forgive me, but I have to apologize to you, because unfortunately, there is no communication on this council. If we did, we would've known you were coming. We would have told you that these amendments were gonna be made. So there would have been no need for you to come. Thank you, though.
Mayor Childs: Ms. Moss, let me add something. Possibly this lack of communication reflects on the lack of communication to tell everybody on council we were going to have a meeting today, huh? The shoe is on both feet.

Mr. Moss: I wouldn't know about [that.]

Mayor Childs: Well, nobody was notified. There were four people; three of us did not know about this meeting. So, Mr. Courtney’s argument is washed.

Mr. Johnson: Mr. Mayor.

Mr. Ott: What was that word?

Mayor Childs: Washed, washed. You like that word?

Mr. Johnson: May I ask Ms. Herrmann a question, please. The amendments were made, but the agenda initially was not approved.

Mayor Childs: The agenda was amended.

Mr. Johnson: Yeah, but don’t we have to make a motion to approve the agenda first and then amend it?

Ms. Herrmann: Some councils do not approve agendas before meetings. We have approval of the agenda before a regular meeting, but the code does not stipulate an agenda approval for a special meeting, because generally there are only one or two topics on a special meeting.

Mr. Johnson: Okay, thank you, thank you for the clarification.

Mayor Childs: Before we go to executive session, I’d just like the read one thing:

Given the sensitive matter, nature of this matter that we are discussing in this special meeting as reflected in the agenda, I feel it is prudent for us to have as much, if not all, of our discussion in these matters in a closed meeting of the council. (Audience uproar.)

Mayor Childs: May I finish? Mayor Childs continued: These kinds of conversation can have real adverse consequences for persons involved, whether intended or not, and no matter how careful that we may feel that we are in our remarks. I understand that this is not a hearing of any sort where persons could be affected by a remark of a councilmember would have an opportunity to rebut comments or suggestions, and it is just not fair, in my opinion, for us to have discussions of these sorts in public forum. Furthermore, I have some concerns that we could unwillingly expose the town and our citizens to claims for legal liability arising out of our comments. I, for one, do not want to be responsible for exposing the town to liability. There is no good reason to discuss these matters in a public meeting.

Mr. Ott: Thank you, Mr. Mayor. May I speak? Mayor Childs: Yes.

Mr. Ott: There will be no accusations in our executive session. It’s simple as that. That means there won’t be no accusations for anybody. We’re gonna a, (**several speaking at once.)

Mayor Childs: Anybody that would like to speak before we go into executive session? If not, we’ll go into, make a motion to go into executive session.
Mr. Johnson: Mr. Mayor, I make a motion we …

Ms. Herrmann: Mr. Mayor, that motion has already been made, seconded, and approved.

Mayor Childs: That’s right, so we’ll go into executive now. (Town Council left for the conference room at 11:13 a.m.)

Mr. Johnson: Mr. Mayor, I make a motion that we exit executive session and go into regular session. (Time was 11:55 a.m.)

Mayor Childs: Do we have a second.

Mr. Ott: I’ll second that.

Mayor Childs: All in favor say aye. All members said aye. Mayor Childs: All opposed no. There was no response. In the opinion of the chair, the ayes have it. MOTION CARRIED.

Mayor Childs: No decisions were made in executive session.

Mr. Stevens: Mr. Mayor. Mayor Childs: Mr. Stevens.

Mr. Stevens: I make a motion of no-confidence on the administrator, and ask that she be relieved of her duties; that we go in a different direction.

Mayor Childs: Do I have a second?

Mr. Ott: I’ll second.

Mayor Childs: Is there any conversation? Mr. Pellegrino?

Mr. Pellegrino: No, I think we discussed everything in executive session.

Mayor Childs: Ms. Samples?

Ms. Samples: Oh, I’ve got plenty to say, but I think I’ll wait till I talk to the press afterwards.

(**Audience uproar.)

Mayor Childs: So, please (gavel.) The question is on the motion, Mr. Stevens’ motion. All those in favor say aye.

Mr. Ott, Mr. Courtney and Mr. Stevens: Aye.

Mayor Childs: All opposed say no.

Unknown speakers: No.

Mayor Childs: In the opinion of the chair, the no’s have it. The no’s have it. The motion is not agreed to.

Ms. Herrmann: Mr. Mayor for the record, would the no’s please identify themselves.
Mayor Childs: Ms. Samples, Childs.

Ms. Herrmann: There were less no’s than there were yeses. No, there were more no’s.

(**Audience uproar.)

Ms. Herrmann: Audience, please.

(**Audience applauding.)

Mayor Childs: Those that voted against the motion [are] Samples, Childs, Pellegrino and Johnson.

That’s the vote.

Mr. Tom Dodge from the audience: We had a flipper.

Mayor Childs: We’re not flipping. It’s the way it is. Sometimes you can’t hear right. If there’s no further business, I’m gonna adjourn. I ask for a motion to adjourn.

Mr. Johnson: So moved.

Mr. Courtney: We’re not having comments?

Mayor Childs: Second to adjourn?

Ms. Samples: Hu, huh (yes).

Mayor Childs: All those in favor say aye. All voted in favor. Mayor Childs: All opposed, no. There was no response. The ayes have it. **MOTION CARRIED.**

Meeting adjourned at 11:58 a.m.

Prepared and submitted by Debra E. Herrmann, CMC, Town Clerk

Approved: September 12, 2017

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Robert F. Childs, III, Mayor

Attest:

_______________________________________
Debra E. Herrmann, CMC, Town Clerk

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