



**SURFSIDE BEACH TOWN COUNCIL SPECIAL MEETING MINUTES
TOWN COUNCIL CHAMBERS
SATURDAY, AUGUST 19, 2017 ♦ 11:00 A.M.**

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.

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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

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106 don't, I do not have an agenda here today on behalf of any party that I understand to be involved or
107 affected. So, I respect your objections, but trust me when I tell you that the taxpayers are my only client
108 here. I did look at the agenda. I had some concerns when I saw the agenda. Not about the ultimate
109 objective, not about decisions of the council that four members of council have asked this council to have
110 a special meeting; y'all have that right to have that special meeting. The council has that obligation to
111 have it when it's called by four members, and y'all will have a meeting, and y'all will have a vote, I
112 assume, if somebody makes a motion. So, my appearance today is not to try to interfere with that or to
113 try to change that in any way whatsoever. However, when I read the agenda what concerned me was
114 you have public comments noted on the agenda [but] the only item is a personnel matter. It is
115 historically this council's policy when I was here before and as I understand it now, not to take public
116 input on personnel matters. There is a very important reason not to do that, because when you consider
117 public employees there are consequences associated with this very action that could be long-reaching
118 and they could be long-lasting, and they could be dire. So we don't generally have public input or public
119 meetings concerning personnel matters. They're often taken in executive session. I've shown some of
120 you the case that arose out of Myrtle Beach. It was *Hubanks v Smith*. The city manager there was sued
121 after a terminating some building officials. This dates back in the 80's. Well, there the Supreme Court
122 gave us, the Supreme Court of South Carolina gave us pretty clear guidance that when disciplinary
123 actions are taken against public officials or public employees they have a liberty interest that could be
124 affected. As a result of that they have a right to present accuser or to refute back allegations made
125 against them. But, this is a Town Council meeting. This is not an adversary hearing, and so in this
126 particular case, Ms. Fellner would not have an opportunity to refute any allegations made by public
127 comment nor by the council. There could be such a hearing, but that's not what a Town Council meeting
128 is. So, my counsel to this body is perhaps you should not have public input on a personnel matter,
129 because it would mark a significant change in policy from what this town normally does, and is just a bad
130 idea. I would encourage you to have the deliberations that you want to have and to have the remarks
131 that the councilmembers want to have in a closed executive session meeting, because in doing that you
132 protect the persons involved. Now, of course, you can't make a decision in executive session, if you
133 deliberate in executive session or you have your comments in executive session, any decision you make
134 has to come out here and be done in public.

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

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

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

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

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

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146 Mr. Stevens: I think he's finished.

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148 Mr. Ott: Well, thank you very much.

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

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157 Mr. Stevens: In order to protect the town and the citizens, I would like to amend the agenda to
158 remove public comments from the; remove public comments.

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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.

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212 Mayor Childs: Ms. Moss, let me add something. Possibly this lack of communication reflects on
213 the lack of communication to tell everybody on council we were going to have a meeting today, huh? The
214 shoe is on both feet.

215
216 Mr. Moss: I wouldn't know about [that.]

217
218 Mayor Childs: Well, nobody was notified. There were four people; three of us did not know
219 about this meeting. So, Mr. Courtney's argument is washed.

220
221 Mr. Johnson: Mr. Mayor.

222
223 Mr. Ott: What was that word?

224
225 Mayor Childs: Washed, washed. You like that word?

226
227 Mr. Johnson: May I ask Ms. Herrmann a question, please. The amendments were made, but the
228 agenda initially was not approved.

229
230 Mayor Childs: The agenda was amended.

231
232 Mr. Johnson: Yeah, but don't we have to make a motion to approve the agenda first and then
233 amend it?

234
235 Ms. Herrmann: Some councils do not approve agendas before meetings. We have approval of the
236 agenda before a regular meeting, but the code does not stipulate an agenda approval for a special
237 meeting, because generally there are only one or two topics on a special meeting.

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

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

242
243 Given the sensitive matter, nature of this matter that we are discussing in this special
244 meeting as reflected in the agenda, I feel it is prudent for us to have as much, if not all,
245 of our discussion in these matters in a closed meeting of the council. (*Audience uproar.*)

246
247 Mayor Childs: May I finish? Mayor Childs continued: These kinds of conversation can
248 have real adverse consequences for persons involved, whether intended or not, and no
249 matter how careful that we may feel that we are in our remarks. I understand that this
250 is not a hearing of any sort where persons could be affected by a remark of a
251 councilmember would have an opportunity to rebut comments or suggestions, and it is
252 just not fair, in my opinion, for us to have discussions of these sorts in public forum.
253 Furthermore, I have some concerns that we could unwillingly expose the town and our
254 citizens to claims for legal liability arising out of our comments. I, for one, do not want
255 to be responsible for exposing the town to liability. There is no good reason to discuss
256 these matters in a public meeting.

257
258 Mr. Ott: Thank you, Mr. Mayor. May I speak? Mayor Childs: Yes.

259
260 Mr. Ott: There will be no accusations in our executive session. It's simple as that. That means
261 there won't be no accusations for anybody. We're gonna a, (***several speaking at once.*)

262
263 Mayor Childs: Anybody that would like to speak before we go into executive session? If not, we'll
264 go into, make a motion to go into executive session.

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266 Mr. Johnson: Mr. Mayor, I make a motion we ...
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268 Ms. Herrmann: Mr. Mayor, that motion has already been made, seconded, and approved.
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270 Mayor Childs: That's right, so we'll go into executive now. *(Town Council left for the conference*
271 *room at 11:13 a.m.)*
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273 Mr. Johnson: Mr. Mayor, I make a motion that we exit executive session and go into regular
274 session. *(Time was 11:55 a.m.)*
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276 Mayor Childs: Do we have a second.
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278 Mr. Ott: I'll second that.
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280 Mayor Childs: All in favor say aye. All members said aye. Mayor Childs: All opposed no. *There*
281 *was no response.* In the opinion of the chair, the ayes have it. **MOTION CARRIED.**
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283 Mayor Childs: No decisions were made in executive session.
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285 Mr. Stevens: Mr. Mayor. Mayor Childs: Mr. Stevens.
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287 Mr. Stevens: I make a motion of no-confidence on the administrator, and ask that she be
288 relieved of her duties; that we go in a different direction.
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290 Mayor Childs: Do I have a second?
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292 Mr. Ott: I'll second.
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294 Mayor Childs: Is there any conversation? Mr. Pellegrino?
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296 Mr. Pellegrino: No, I think we discussed everything in executive session.
297
298 Mayor Childs: Ms. Samples?
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300 Ms. Samples: Oh, I've got plenty to say, but I think I'll wait till I talk to the press afterwards.
301
302 *(**Audience uproar.)*
303
304 Mayor Childs: So, please (gavel.) The question is on the motion, Mr. Stevens' motion. All those in
305 favor say aye.
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307 Mr. Ott, Mr. Courtney and Mr. Stevens: Aye.
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309 Mayor Childs: All opposed say no.
310
311 Unknown speakers: No.
312
313 Mayor Childs: In the opinion of the chair, the no's have it. The no's have it. The motion is not
314 agreed to.
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316 Ms. Herrmann: Mr. Mayor for the record, would the no's please identify themselves.
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318 Mayor Child: Ms. Samples, Childs.
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320 Ms. Herrmann: There were less no's than there were yeses. No, there were more no's.
321
322 (***Audience uproar.*)
323
324 Ms. Herrmann: Audience, please.
325
326 (***Audience applauding.*)
327
328 Mayor Childs: Those that voted against the motion [are] Samples, Childs, Pellegrino and Johnson.
329 That's the vote.
330
331 Mr. Tom Dodge from the audience: We had a flipper.
332
333 Mayor Childs: We're not flipping. It's the way it is. Sometimes you can't hear right. If there's no
334 further business, I'm gonna adjourn. I ask for a motion to adjourn.
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336 Mr. Johnson: So moved.
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338 Mr. Courtney: We're not having comments?
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340 Mayor Childs: Second to adjourn?
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342 Ms. Samples: Hu, huh (*yes*).
343
344 Mayor Childs: All those in favor say aye. All voted in favor. Mayor Childs: All opposed, no. *There*
345 *was no response.* The ayes have it. **MOTION CARRIED.**
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347 Meeting adjourned at 11:58 a.m.
348
349 Prepared and submitted by Debra E. Herrmann, CMC, Town Clerk
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351 Approved: September 12, 2017
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353 _____
354 Robert F. Childs, III, Mayor
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356 Attest:
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358 _____
359 Debra E. Herrmann, CMC, Town Clerk
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361 Clerk's Note: This document constitutes verbatim minutes of the meeting that was digitally recorded,
362 and is as close to verbatim as possible. Appointments to hear recordings may be made with the town
363 clerk; a free copy of the audio will be given to you provided you bring a new, unopened flash drive. In
364 accordance with FOIA §30-4-80(A) and (E), meeting notice and the agenda were distributed to local
365 media and interested parties via the town's email subscription list. The agenda was posted on the entry
366 door at Town Council Chambers. Meeting notice was also posted on the town website at
367 www.surfsidebeach.org and the marquee.