



**SURFSIDE BEACH TOWN COUNCIL SPECIAL MEETING MINUTES
TOWN COUNCIL CHAMBERS
November 28, 2017 ♦ 5:00 P.M.**

1
2
3
4
5
6
7 **1. CALL TO ORDER.** Mayor Childs called the special meeting to order at 5:00 p.m. Mayor
8 Childs, Mayor Pro Tempore Ott, and Councilmembers Courtney, Johnson, Pellegrino, Samples and
9 Stevens were in attendance. A quorum was present. Others present: Town Attorney Battle;
10 Administrator Fellner; Town Clerk Herrmann, and Deputy Administrator Harrah.

11 **2. PUBLIC COMMENTS – AGENDA ITEMS.** (3 minutes).

12 Ms. Mary Mabry, 15th Avenue North: First of all, I want to say thank you so much for having this
13 meeting. It is so important. Mayor Childs: Ma'am, would you please give your name and address. Ms.
14 Mabry: Oh, I'm sorry. Mary Mabry, 517 15th Avenue North, Surfside. The main thing I want to say is
15 thank you for having the meeting. It is important for the public, and it's important for you, because we
16 can never be reminded enough about the unique form of government that Surfside has. It's daunting, if
17 you take it in its whole. You [sic] not only legislative, but you are administrative, as well. So, it's a big
18 task, and so thank you for having the meeting, but I'd also like to remind you, and we're talking about
19 some the things I hope the attorney goes into, just because you don't say anything or you don't vote on
20 anything doesn't mean that you're not complicit in the actions of any administrator or anybody, so
21 please, be aware that your silence is often speaking volumes. So I do want to remind you that they're
22 going to be some issues coming up. I hope you keep that in mind.

23 Mayor Childs: Anybody else? If not, we'll move to business.

24 **3. BUSINESS. Question and answer discussion with Town Attorney Mike Battle,**
25 **including, but not limited to taking minutes of executive session.**

26 Mayor Childs: We'll move on to the business questions and answer discussion with attorney Mike
27 Battle, including but not limited to taking the minutes of the executive session. Mr. Battle.

28 Mr. Battle: I am hear your request to answer any questions you have. I can give you an attorney
29 general's opinion, if you want that or I can answer any questions you have, if you specific questions.

30 Mayor Childs: Does anybody have specific questions for Mr. Battle? Mr. Ott.

31 Mr. Ott: If you would, thank you, Mr. Battle, would you give us your opinion on the taking the
32 minutes in our executive session, which is on our, we'll start off with that. Thank you.

33 Mr. Battle: Let me start with a legal opinion, and then go to an experiential opinion that you may
34 or may not want. You can cut me off at any time. Legally you can take minutes in executive session. The
35 minutes themselves should not disclose any information that would be exempt under your Freedom of
36 Information Act. For example, if you were to go into executive session and to talk about an individual and
37 discipline of an individual, and that sort of stuff, you may be able to go in and mention the case name,

Town Council Special Meeting
November 28, 2017

38 but really you should not in your minutes talk about who, the person's name, because the minutes
39 become public records. So taking minutes would basically boil down to an executive session, the attorney
40 advised us as to such and such a contract or a talk about this employment matter, and, and you can't
41 take any action in executive session. No votes or anything can be taken, but you could take minutes.
42 They are permitted, but the my question is, and then my thought is how do you approve those minutes
43 and what goes into those minutes, and the minutes, if you're, if you're going to do the minutes, and you
44 are going to approve them, the minutes should have the same exemptions, including in them that are in
45 the in the statute that are included in your minutes so that you leave out certain things from the minutes
46 and you don't name names, and, and you don't take a verbatim record, and there is authority that you
47 can prohibit a council or councilmembers from all recording verbatim minutes of the sessions. Also, the
48 decision as to whether or not to take minutes is a decision for the council as a whole. The council as a
49 whole acts as a body. An individual would not, if, if, could be subject to discipline, if they were to take
50 minutes and keep the minutes and try to say that those are the minutes, and do that against the wishes
51 of the majority of the body.

52 Mr. Ott: Okay. One follow up, sir. If we did take these minutes, could we limit them to being just
53 specific items like we said we would hire somebody, and we said what the approximate salary would be,
54 if we said something like that? Could we just do those things without being completely verbatim?

55 Mr. Battle: I'm trying to; certainly your discussion, but the decision to hire somebody is a public
56 matter. Their salary is exempt if it is under \$50,000. If it is over \$50,000, then it is a matter of public
57 record. So I'm not sure, if you not make any decisions, what you would want to do. The discussion, you
58 know, I think so is a bad person. I don't want them to be hired should be left out. But we discussed the
59 employment of the city clerk, and we decided, and, and we discussed the potential salaries and that sort
60 of thing, but no action was taken. And then you come out on the dais, and you say okay, we decided to
61 hire Debra Herrmann as a city clerk and we are going to pay her salary of \$60 or whatever thousand you
62 pay her. That's the way you would do it. But in your minutes themselves, the best rule of thumb is if it's
63 exempt from disclosure from the statute, it should be left out of the minutes. That's the way I look at it
64 as my thing. And the minutes have to be something that's approved by the council as a whole, and that
65 is, is a matter that is not clear. The Attorney General's opinion says it is not clear, but that's my rule of
66 thumb. That would prevent you from getting into problems with invasion of privacy; gets you into
67 problems with liability issues. The one thing that all of you should know, and I'm sure you do know, but
68 one thing you should know is that if you disclose any confidential information from executive session,
69 such as discussion of negotiations of a contract, along those lines, and somehow you or some member of
70 your family may get some financial gain out of that, that violates the statute and could be prosecuted in a
71 criminal action.

72 Mr. Ott: Thank you very much.

73 Mr. Johnson: For follow up on that if people, councilmembers disclose information from the

Town Council Special Meeting
November 28, 2017

74 executive session, you were talking about liability, or fines or so on and so forth. Let us know about that;
75 your opinion.

76 Mr. Battle: I'll be glad to email this to your administrator, or whomever you want me to; your
77 clerk. The opinion is almost directly on point on that issue is a 1984 Attorney General's opinion and the
78 site on it if you want to go see to it is 1984-WL-566300. It deals with that question specifically, and it has
79 a lot language. It is close to 12 pages long. I'm not going to go into it. Let me just give you a rule of
80 thumb. I think if an individual discloses information that's in executive session, and the individual is not
81 allowed by council, and y'all agree, and your ordinances say you will not disclose things from executive
82 session, I think that the body has the ability to discipline within its own members; certainly by statute
83 and under *Roberts Rules of Order* there's a procedure which is the default procedure in your ordinance,
84 but as far as being the individual being prosecuted or being somehow or other dealt with, that would
85 violate the First Amendment. You have a right to conduct your meetings. You have a right to discipline
86 your own members and deal with your own members, but that is your responsibility. That would not be a
87 court or some ethics panel in Columbia responsibility. Does that make sense to you?

88 Unknown Speakers: Yes. Yes it does.

89 Mr. Johnson: Also following up on that what is your opinion of councilmembers recording
90 conversations in executive session?

91 Mr. Battle: It can be prohibited. There is case law, and there is not any US Supreme Court case
92 law; there is not any South Carolina Supreme Court, or Court of Appeals State Law, but there is case law
93 that says you can; you're allowed to prohibit that in your ordinances you prohibit the disclosure of
94 information from executive session. So the question is recording. You have somebody that is doing
95 something that the council, acting as a whole, decides that is not proper. They have a right to control
96 their meeting. That is my opinion. You won't find a law; you also have a right if you find, and let's
97 assume you have a situation where you have somebody says I don't care what your say, I'm gonna
98 record; you can't stop me. That can be then construed as a disruption of your executive session, because
99 people don't feel free to talk. They don't feel free; the whole purpose of going into executive session is to
100 go in and be able to exchange sensitive ideas or legal matters, or something along those lines freely and
101 you do have the authority to expel a member who's being disruptive under statute and under *Robert's*
102 *Rules*. I certainly would hope it wouldn't get to that. I would remind all of you that you have taken an
103 oath to follow the laws and execute your duties according to the law. In doing so, if you have an
104 ordinance on the books that says you won't do this, and you deliberately disobeyed that or you
105 deliberately ignore it, then there may be a question of whether not you violated your oath, and again that
106 would be a matter for the body to take up in a disciplinary action within the body itself, that is council.

107 Mr. Johnson: Thank you.

108 Mr. Stevens: Thank you for coming here, Mr. Battle. Under Section 2-151 of the Surfside Beach
109 ordinance, it says under there, and I'll be glad to give you a copy of it, it says the town attorney shall

Town Council Special Meeting
November 28, 2017

110 serve at the pleasure Town Council.

111 Mr. Battle: That is correct.

112 Mr. Stevens: And it also says it shall be the duty of the town attorney, whenever called upon by
113 the Town Council or the necessity arises to give advice to or/and direction to Town Council or any
114 member thereof. Now, you just said is a statement a few minutes ago that you would contact the
115 administrator, but you're not going to contact council, but it says ...

116 Mr. Battle: I did not say that I was not going to contact council. I said I would send a copy of
117 this opinion so she could distribute it, but any if body wanted it, I'll be glad to ...

118 Mr. Stevens: Is it fair when you give that opinion to the administrator that you also send it to
119 each member of council so we're fully informed?

120 Mr. Battle: That's reason I gave the site. You can get off the Internet. I'll be glad to give
121 everyone an opinion. It's an Attorney General's opinion, it's a public record.

122 Mr. Stevens: And I want to go one step further, and this is public information. I'm gonna give
123 you a copy of the minutes of July 24, 2012. We are in the process of this, [it] is going to be coming
124 before us today about changing the duties of the administrator, and if you go down to line 319, it quotes
125 "Mayor Samples said it was a general statement that the town government, everything that Town Council
126 does is government. The town administrator is not over the legislature." Would you agree with that
127 statement?

128 Mr. Battle: The town administrator serves at the pleasure of the council as a whole. That's a
129 majority.

130 Mr. Stevens: Thank you. Alright, attorney Moss, Ken Moss, who was our ... He said there are
131 also other factions. The administrator does not manage, i.e. the court systems that is managed through
132 the court administration, and some police and fire functions that are managed at state level. Would you
133 agree with those statements by attorney Moss?

134 Mr. Battle: I might quibble with the way the language is or how it's interpreted. Let me give you
135 what I think is close to that. I believe that the administrator does not manage court system. I think
136 council can manage the court system through its appointment of the judge, the hiring of the municipal
137 judge. I believe that is a court, I mean a statutory right of council, so to that extent you manage the
138 court system. Police and fire functions, obviously, they're bound by state law and state statutes. I don't
139 think they take direction from anyone other than who is the head however your government set up in the
140 flowchart. Certainly they have to obey all state statutes, and that typically applies to criminal matters,
141 because the city cannot make a matter a criminal matter by ordinance unless it is also recognized by
142 statute or common law as being a criminal matter.

143 Mr. Stevens: Okay and I will continue on, and in this. Like I said, this is public minutes. July 24,
144 2012. The mayor said in his opinion the first duty of administrator is to ensure that the elected officials
145 are fully informed with each member receiving the same information, and then he stated over the past

Town Council Special Meeting
November 28, 2017

146 two administrator that has not happened, in his opinion. Under, and I'm gonna give you a copy, this is
147 the previous law, and this was the law that was adopted. Would you agree that the duties under the
148 duties of the administrator is to keep the Town Council, each and every member, fully informed with the
149 same information?

150 Mr. Battle: Now, which one is the current one? The large print?

151 Mr. Stevens: The other one with the bigger print is the current one, and the one has a date on
152 the bottom of 2/25/2008, which that was a previous ordinance, and the other one is a ...

153 Mr. Battle: The other one has been replaced, correct?

154 Mr. Stevens: Yeah.

155 Mr. Battle: So, the only one need to be concerned about is what's in the law now.

156 Mr. Stevens: Yeah.

157 Mr. Battle: I would refer to Section 2-113 (A), it says the town administrator is responsible for
158 keeping the Town Council fully informed to support Town Councilmembers fulfillment of their fiduciary
159 responsibilities, and to better represent the citizens. That is what it says.

160 Mr. Stevens: Yeah. So that would Mayor Samples' statement be correct that everybody, every
161 councilmembers needs to be treated exactly the same. All information needs to go to each
162 councilmembers, the same information.

163 Mr. Battle: You know, to pull a rule out of the air like that, first of all, you're talking about it
164 hasn't been done by previous administrators. I have no knowledge of that matter. As to information
165 informing the councilmembers, if all of the councilmembers want the information requested, they are
166 entitled to it. I have no question with that.

167 Mr. Stevens: Okay, alright. But should the administrator inform, it says her duties are to fully
168 informed Town Councilmembers, and I would say Town Councilmembers in plural would be all Town
169 Councilmembers.

170 Mr. Battle: I agree with that. I don't have any problem with that. What I'm thinking about is the
171 nuts and bolts of let's say, the administrator has a conversation with you about an issue that you bring
172 up to the administrator regarding a pothole that needs to be fixed in your neighborhood.

173 Mr. Stevens: Right.

174 Mr. Battle: I don't necessarily think she is required to send out a memo to all members of
175 council that that pot hole is going to be fixed, because ...

176 Mr. Stevens: That make sense. That makes sense.

177 Mr. Battle: Well, I hope so.

178 Mr. Stevens: Okay, and on the same minutes, July 24th, on the second page, starting a line 336
179 with Mayor Samples, it says Mayor Samples said it would be imprudent for an administrator to take such
180 drastic actions as hiring or firing a department director unless it was because of moral outrage or similar
181 circumstances that were documented, and I emphasize "were documented." He further stated in the

Town Council Special Meeting
November 28, 2017

182 past, department directors were not hired nor terminated without council approval. Department directors
183 are critical to the town function. Attorney Moss, who was representing the town at that time, said in his
184 opinion, the authority to hire and fire department heads is not in the proposed ordinance that the
185 authority is in the current ordinance. Adopting the amendment would remove that authority from the
186 administrator. Councilman Smith asked if designated the administrator to chief administrator of the town
187 gives them that authority. Mr. Moss said there was no express authority in the draft ordinance, so in his
188 opinion, it did not. Do you agree with that statement?

189 Mr. Battle: I can't agree or disagree with that. I'm not at all ...

190 Mr. Stevens: Can you give us your legal opinion on it?

191 Mr. Battle: Council can set the duties of the town administrator. If you say you can't hire and fire
192 without the permission of council, I think you have the right to do that. If you don't say that and the part
193 of the contract or ordinances are such that the administrator can hire and fire without Town Council
194 permission, the administrator can do that. I think is purely a matter of your discretion as to how you
195 want to proceed and how you want the administrator to function, and what duties you want to authorize.
196 I don't know of any statute that requires you to act outside of your discretion.

197 Mr. Stevens: Okay. Alright, that's good enough. I want to give you this. This is state law, and
198 just wanted to discuss some of the sections. This is under Title Five, Municipal Corporations, Chapter 11,
199 Council Form of Government. As you may know, under our town ordinance, we are listed as a council
200 form of government, and under Section 5-11-30 it says legislative and administrative powers of the
201 municipality vested in the municipal council. All legislative and administrative powers of the municipality
202 and determination of all matters of policy shall be vested in the municipal council. Each member of
203 council, including the mayor, shall have one vote. Now, under our code, under our ordinance were under
204 council form of government. Under state law, is this, am I correct in assuming that what we have is that
205 we are a council form of government, and that we have the legislative and administrative powers as
206 stated by state law. Am I correct?

207 Mr. Battle: You are correct. But, let me say this, that doesn't prevent you from delegating any
208 administrative authority you want to, and allow any discretion you want to delegate to any administrator
209 or assistant administrator. You can delegate that authority.

210 Mr. Stevens: Okay. Yeah.

211 Mr. Battle: It's vested with the council.

212 Mr. Stevens: But council does have legislative and administrative powers?

213 Mr. Battle: That is what the statute says.

214 Mr. Stevens: Okay, alright, that's fine. I'm gonna go a little further, and I want to hand you this
215 right here, and I want a clarification, because this is, I got this from US Legal, it's a legal website, and it
216 gives the existence of a contract, and requires seven items. Now under the current contracts that we
217 have, and I'm gonna let you look at these, I want a clarification on this. On each one of 'em, it has terms

Town Council Special Meeting
November 28, 2017

218 on dated on a certain date. You, if you could read those terms, and where it says terms on ...

219 Mr. Battle: I've read these documents.

220 Mr. Stevens: Okay, under Section 6 of the existence of a contract, a legal contract, it says terms
221 and conditions for performance, but under these two contracts I gave you there's no terms or conditions.

222 Mr. Battle: Bear in mind that the written document is a record, but it is not necessarily the
223 contract. The contract is formed by the instructions you give, it's formed by whatever the ordinances are
224 you have a situation where you have reference to other terms that they have been going on since 2015
225 and 2016. It is an understanding. What is a contract is a meeting of the minds. I understand these things
226 are good, and we had them all in law school. But, I can tell you that court of law, if there's an
227 understanding between the parties as to how much you're going to get paid, what your job's going to be,
228 and how long you're going to do it, you've got a contract. It can be verbal; it can be written. It doesn't
229 matter.

230 Mr. Stevens: My problem when I, and that's the reason I voted against it, if you look at the
231 latest one.

232 Mr. Battle: I see it.

233 Mr. Stevens: I, I did not vote for that because there were no terms and conditions written out,

234 Mr. Battle: I see that.

235 Mr. Stevens: And to me that's not a meeting of the minds, if I have nothing that spells out any
236 terms.

237 Mr. Battle: Okay.

238 Mr. Stevens: Am I correct?

239 Mr. Stevens: No, sir. The contract does not have spell out in the body of the written document;
240 the contract does not have to spell out the terms and understanding of the parties. Besides that, you've
241 got one, two, three, four, five, six people who felt that they did have an understanding and meeting of
242 the minds, and I assume you had the person who was the contracting party had a meeting
243 of the mind and has been forming and acting in accordance with that since that point in time. So, I
244 disagree with you that it has to be in the written document. We have memorandums of leases that we
245 record in the courthouse all the time that just simply say there's a lease between these parties, and that's
246 is sufficient to be evidence of the lease. Contracts, the only time that you have an issue with contracts is
247 under the Statute of Frauds, and that is raised as an affirmative defense. That's when you have contracts
248 that deal in the real estate, or contracts that have to be performed in excess of a year, or something
249 along that. You don't have any writing or anything signed by either party and then somebody can raise a
250 defense of Statute of Frauds, but you can waive it, also.

251 Mr. Stevens: Okay. My question is would you recommend that these terms be written out?

252 Mr. Battle: I think that it is always best to write; if you want to be right, you write.

253 Mr. Stevens: In other words, full disclosure.

Town Council Special Meeting
November 28, 2017

254 Mr. Battle: Full disclosure, certainly.

255 Mr. Stevens: Okay, alright. I'm gonna will share with you an email. This is another question I
256 have. As you see, once you look at this, this is an email from you sent August 23rd, 2017 at 4:41 p.m. It
257 was sent to Micki Fellner, and it was, the subject was executive session audio from 'Keeping it Real' I
258 don't know what that is, but I think it's Facebook, I believe. In the second paragraph, and I highlighted
259 it, as you said there are some other remedies that may be available. Section 5-7-210 allows council to set
260 conditions for forfeiture of office. This is, that it is essentially an impeachment proceeding. It is a long
261 and expensive process. I do not recommend it. By the way, here's the law. I've brought the law with me.
262 Are you familiar with it? (Mr. Battle indicated yes.) Mr. Stevens: Okay, my question is, is why would
263 somebody from town, from the town of Surfside send you an email and request information about [an]
264 impeachment hearing? Is there member of this council that was referred to for impeachment?

265 Mr. Battle: I do not have the ability to waive any attorney-client privilege. If the body as a whole
266 wants to vote to waive it, I'll be glad to answer your question.

267 Mr. Stevens: I would like to know.

268 Mr. Battle: You need a motion and a resolution to waive it.

269 Mr. Ott: I'd like to make a motion to waive that so that we can hear the client/attorney privilege
270 so we can actually hear the name and who it was.

271 Mr. Stevens: I second.

272 Mr. Ott: All those in favor?

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

274 Mayor Childs: Three ayes; insufficient number.

275 Mr. Johnson: I'm not really sure that I want to go there.

276 Mr. Stevens: Pardon me?

277 Mr. Johnson: I'm not really sure that I want to go there, but ...

278 Mr. Stevens: Well, it is somebody from town, from this town ...

279 Ms. Samples: Mr. Mayor, could we have quiet in the room, please.

280 Mayor Childs: Gavel.

281 Mr. Stevens: Somebody from this town, recommended somebody for impeachment.

282 Mayor Childs: Would you hold up, Mr. Stevens, please. We've got a motion. Can we; Mr.
283 Johnson you would like to be heard?

284 Mr. Johnson: Can I get some clarification? Would it be from; would you mention names?

285 Mr. Battle: No, I would not.

286 Mr. Johnson: Oh, okay. I'll vote for it.

287 Mayor Childs: Okay, motion approved.

288 Mr. Battle: I was requested to say what happens if individual members of city council published
289 materials that were brought up in executive session. No names were given. What, if any, would be the

Town Council Special Meeting
November 28, 2017

290 possible way to punish them or sanction them? The Attorney General's opinion was on the exact same
291 question. It was not specific; no names were made. I certainly don't recall anybody being singled out. It
292 was just the question was asked what can we do, and told him in my email, I said I can't find any
293 authority on the subject one way or the other, which is true. The second part of it is it's your ordinances
294 which prohibit that are presumed to be Constitutional, but to violate, you have a general ordinance that
295 deals with a violation of an ordinance may be considered a misdemeanor. So, I anticipated the question
296 whether that would violate the First Amendment to prosecute somebody on a First Amendment basis;
297 you can't do that. I don't do that, I don't think you could. Then I went on the next step and okay, if you
298 can do that, what's available to you? Then I said 5-7-210, which I told y'all about earlier, about the
299 statute giving you the right to sanction and discipline your own members or remove 'em. I told the
300 administrator about that particular statute, and then I said, I don't recommend considering going down
301 that road, because is a long expensive, unnecessary process. There was no individual member of council
302 singled out. I have no idea who has been violating or has been going against the code, or the executive
303 orders. As you know, I don't come to these meetings unless I'm requested to, so I have no idea who is
304 being referred to. I don't think it was any attempt to; I was not specifically asked. I will say I was not
305 specifically asked how do you impeach a member or what do you do to impeach a member or anything
306 along those lines. I don't think that was ever the intent. Basically, it was the intent of some members are
307 upset with stuff being discuss in executive session being disclosed to the public and does that open us up
308 to liability, and what can council as a whole do about it.

309 Mr. Stevens: Okay. I'm gonna ask another question on that.

310 Mr. Battle: Sure.

311 Mr. Stevens: This was sent to the administrator, Mickey Fellner.

312 Mr. Battle: Correct.

313 Mr. Stevens: So, she is executive, the executive administrator or the administrator of the town,
314 and she works at the pleasure council. I would have to assume either she did this on her own or
315 somebody directed her.

316 Mr. Battle: I don't know.

317 Mr. Stevens: That, that's the question that is, that I have to ask, because she works at the
318 pleasure of council. Why would she send an email having any question about impeachment?

319 Mr. Battle: First of all, let me correct you. There was not a question about impeachment.

320 Mr. Stevens: There was none?

321 Mr. Battle: The question was solely about executive sessions, and how to sanction or how to
322 prevent [sharing information.] The impeachment came solely from me. It was not asked for, and I was
323 just giving an example, just like I gave you the example of the pot hole. It has nothing to do any request
324 for an opinion. I get requests for opinions from your fire chief, from your police chief; I get requests from
325 your assistant administrator, and I get requests for opinions from your clerk, and from your

Town Council Special Meeting
November 28, 2017

326 administrator. I respond to those requests and try to answer in as brief and as sensible way that I can.

327 Mayor Childs: Mr. Stevens, let Mr. Ott (**). You've had enough time, let Mr. Ott ask a question.

328 Mr. Ott: Thank you, Mr. Battle, and I'd like to make just one statement on that, and I think it
329 was almost the entire council that wanted to know where this was coming from and it wasn't just the
330 administrator. I believe that when we were in that executive session, we asked for that to be done. If I
331 can have anybody else say anything on that? If I remember correctly, we wanted to know how did that
332 information get released. That's what we asked.

333 (** several speaking at once.)

334 Mr. Stevens: And I think you explained earlier that that if we wanted to record or keep minutes
335 of executive session, we could.

336 Mr. Battle: I think council can prevent you from recording it.

337 Mr. Stevens: No, I'm talking about we, the whole council. If we voted ... that's what I'm saying.

338 Mr. Battle: Oh, yeah, if the whole council voted to recorded it ... I think that you are, you would
339 be violating the Freedom of Information Act to go into executive session and record it, simply because
340 there is no need to go into executive session and then have a public document come out. You have to go
341 into executive session; you have to have a reason to go into it. You can't simply go in because you feel
342 good and talk about it. If you go into executive session and you record it, then that recording becomes a
343 public document and it's like it didn't occur. To me, if you're going to have that kind of record of what
344 takes place, it becomes a public record under the Freedom of Information Act. The best thing to do is do
345 it out here on the dais, and let everybody be aware of what is going on. I see no reason for executive
346 session in that situation, and I feel like that often times the reasons for going into executive session are
347 sometimes abused; not this council, but such, and I say that. But, I have seen it abused in other
348 situations.

349 Mr. Stevens: And, we have had members of the press that said that in some cases, we have
350 violated Freedom of Information on executive sessions. What is your suggestion as our town attorney for
351 reasons to go into executive session? I realize it seems like sometimes we go in executive session every
352 time we turn around, and I'm thinking, well do we really need to do this. What is your recommendation,
353 your recommendation as our attorney in your, your legal opinion of why we should go into executive
354 session.

355 Mr. Battle: Those exceptions are set forth expressly in the statute. My opinion is you should
356 follow the statute, and you should have a majority vote of council after a proper motion, and resolution
357 to go in. If it doesn't fall within one of the exception exemptions, you shouldn't go into executive session
358 to discuss it.

359 Mr. Stevens: Okay.

360 Mr. Battle: I haven't memorized the statute, but one of them would be employment matters;
361 contract negotiations; to receive legal advice; those types of things.

Town Council Special Meeting
November 28, 2017

362 Mr. Stevens: This is a question that goes to all the council. Would you, would council have any
363 problem with the attorney Battle sending us, all of council, a memorandum, legal opinion outlining our
364 reasons for going into executive session, so we'll have a full legal knowledge and understanding of it?

365 Mr. Battle: I would be glad to send you the statute, because it's very clear.

366 Mr. Stevens: Could I have a consensus on it?

367 *Several members concurred by voice or indicated agreement.*

368 Mr. Stevens: Thank you.

369 Mr. Battle: Very good.

370 Ms. Herrmann: Mr. Mayor, was that a consensus?

371 Mayor Childs: Does anybody else have any questions here?

372 Mr. Courtney: Ms. Samples.

373 Mayor Childs: Ms. Samples, do you? (Ms. Samples indicated no.) Okay, Mr. Stevens, continue.

374 Ms. Herrmann: Mr. Mayor was that a concurrence?

375 Mayor Childs said yes, concurrence. **Council CONCURRED.**

376 Mr. Stevens: I have another question.

377 Mayor Childs: Mr. Stevens has a question.

378 Mr. Battle: Yes, sir.

379 Mr. Stevens: I'm gonna give you another document. This is a public document.

380 Mr. Ott: I don't think that's for this.

381 Mr. Stevens: We are currently in the midst of a lawsuit and the one of the defendants is the
382 town of Surfside. Normally on lawsuits we are represented by any insurance firm out of Columbia. And I
383 see on this lawsuit from the Horry County 15th Judicial Circuit Case Number 2016-CP-260-5531 that you
384 are representing the town.

385 Mr. Battle: That is correct.

386 Mr. Stevens: Alright. How much is that costing the taxpayers?

387 Mr. Battle: My hourly rate is \$225 an hour, and I bill on an hourly basis.

388 Mr. Stevens: Bill on an hourly basis. How many hours did you say you have now tied up in this
389 case?

390 Mr. Battle: I really don't know. I would estimate the case is going to end up costing the town
391 between \$15,000 and \$20,000.

392 Mr. Stevens: Fifteen to \$20,000?

393 Mr. Battle: Yes, sir. If I can go further, we submitted this to the insurance company. The
394 insurance company denied coverage. They said we were not covered; it did not come within our policy.
395 They asked me to go ahead and defend it. I made the motion to try to get it dismissed on a legal charge.
396 The judge would not do that, so we then had to go through discovery. We're now going through, getting
397 ready to go through a mediation. There is a possibility, and I have discuss this, there is a possibility that

Town Council Special Meeting
November 28, 2017

398 at the end of the case to bring an action against the insurance company. [My] brother does it all the time
399 for bad faith in refusing to cover the claim. That is a possibility, but for right now, the town had to defend
400 the claim, and I was the town attorney and they asked me to do it as I have experience in these types of
401 claims.

402 Mr. Stevens: Okay. So, are you thinking before this is over we're gonna spend somewhere in the
403 \$25 to \$30,000 range?

404 Mr. Battle: It's very possible.

405 Mr. Stevens: [Whistled] Okay. That was just a question.

406 Mr. Battle: And, I'd be glad to brief you in executive session as to what your liabilities are and
407 why there may be liability.

408 Mr. Stevens: Okay. That I would like to find out.

409 Mayor Childs: Is there any further question? Mr. Ott.

410 Mr. Ott: Thank you. I have one question and it is basically a lot of what Councilman Stevens
411 went over, and it's in reference to the duties of the administrator. What confuses me is that it stated in
412 there that the attorney that was present that evening said that the statute was not going to be changed,
413 but I didn't understand why this council sat here and voted on the judge, and it was not the appointment
414 of the administrator. She did not do it. We had another in a[n] executive session. We voted on not to
415 discharge a director, and even before I was on council, the council under those rules voted on the police
416 chief, which is Rodney Keziah. It states in the employee handbook, also, that the administrator may
417 discharge or at the pleasure of council at the recommendation of council. So I do not believe that that
418 ordinance was changed at all, because of those facts, and the administrator has never had that ability to
419 do that without the approval of council.

420 Mr. Battle: Usually, and I don't know, because I was not asked and was not given information
421 that I was to be looking at that point, so unless I look at your ordinances, and all that sort of stuff,
422 usually council sets the policy; hires an administrator to take care of personnel matters, because if you've
423 ever been involved in personnel matters that is a very time-consuming thing, and y'all will be having
424 special meetings regularly, and your job duties will increase. As far as what the duties of the, what the
425 rights of the administrator are or are not that is something that would have to go and look at the
426 ordinance. What it says in the ordinance, I do not have that in front of me. And then I would have to look
427 at y'all's past practices and customs.

428 Mr. Ott: I would appreciate it if you could do that for us and stated what happened and was it
429 changed or was it not changed at that time, because of the practices since that date where council was
430 approving all directors at that time up until recently. Mr. Battle, this has been a very, very nice meeting
431 here with you. I appreciate you coming here. It helps us a lot.

432 Mr. Battle: Thank you.

433 Ms. Samples: We need a concurrence on what Mr. Ott just suggested that the attorney do. You

Town Council Special Meeting
November 28, 2017

434 need council concurrence. One councilmember cannot direct.

435 Mayor Childs: Do we have a concurrence of council?

436 Mr. Stevens, Mr. Ott, Mr. Courtney, and others said or indicated. Yes.

437 Mayor Childs: You have concurrence. Mr. Courtney.

438 Mr. Courtney: Good evening, Mr. Battle. Thank you for coming. I was the one that invited you
439 and I thank you very much for being here. I just want to try to sum this up a little bit. I've been listening
440 very carefully to what you said, and what you're basically saying with executive session that is should
441 only be personnel matters of discipline and hiring, and firing should be up here on the dais of the
442 directors, is that correct?

443 Mr. Battle: If council does it, it has to be done on the dais. If you, you can only act through
444 ordinance or resolution. So, that's how you would go about it, and I don't, you cannot go back in
445 executive session and fire somebody. That's my opinion.

446 Ms. Herrmann: May I ask Mr. Battle to explain "resolution," please, to the council. That's not a
447 term that we use in the sense that you're referring.

448 Mr. Battle: A resolution is a first reading only vote of the majority based on a motion and a
449 second. An ordinance requires two readings. So, you could by resolution, say I hereby move to terminate
450 such and such, so-and-so, and/or terminate, you don't even have to name who it is, this person. You can
451 discuss it in executive session, but when you come out on the dais, you're going to have to do it by public
452 vote.

453 Mr. Courtney: I'd also like to ask you about recording in executive session, and I apologize, I
454 really want to send you out questions, but unfortunately our mail system, the integrity of our mail system
455 has been compromised. I had department emails that have been posted all over Facebook, which the
456 chief of police has been notified about, and they weren't sent out by me. So this is where we have a
457 problem here. Go into executive session, you said before it should really strictly be personnel issues, as
458 far as discipline, and hiring. Firing should be up here, correct?

459 Mr. Battle: The act itself. Now your discussion and the privacy of what you want to discuss and
460 criticisms and all that sort of stuff can be done in executive session, but the act to do something, they
461 want a public record of who voted for and against.

462 Mr. Courtney: The reason I bring us to your attention is because since 2012 the Council has
463 hired over 17 directors on this dais. We've, and even gone as far as hiring our police chief, our fire chief,
464 our town clerk, hiring code enforcement, appoint judges. We appointed our judges that we have
465 currently now. So by this, from reading here is that we, the council is a council form of government. We
466 appoint our directors, correct?

467 Mr. Battle: If you've delegated that authority to someone else, they can do it as well as you. I
468 think is any reason why you can't. I mean, as a practical matter, you can say, you can instruct the
469 administrator, which is one of the things I do with some towns and say look just instruct your

Town Council Special Meeting
November 28, 2017

470 administrator to hire this person, or you can instruction your administrator to terminate this person. But,
471 that sort of resolution or whatever is something that should be done from the dais. You should do that.
472 In certain cases, you would have to conduct a hearing, and then rather than having a grievance
473 procedure, you'd have to have a hearing and let that person have an opportunity to speak, and give
474 reasons why they should not be terminated, and then the person on the other side who is recommending
475 the termination would be allowed to come in and then the two come together, and then y'all act as a
476 quasi-judicial body.

477 Mr. Courtney: So, it would be up to Council is what you're saying, on this dais?

478 Mr. Battle: I think, and as a practical matter, let's say you don't agree with the decision of your
479 administrator. I think you can override that decision. You may have to change some of your ordinances. I
480 haven't, like I said, I haven't researched what your ordinances said.

481 Mr. Courtney: So it is up to council is what you're saying.

482 Mr. Battle: Yeah. (**) Let me, let me say just one thing, again, if your ordinances prevent you
483 from doing that you'll have to go to an ordinance. If your ordinances don't prevent you from doing that
484 you can do it by a single reading through a resolution. But, you have to have a majority.

485 Mr. Courtney: So based on, also, you had said about verbal contracts. Now, I find that to be
486 very weak, to be honest with you. If I was going to have a contract, I would have a written contract.
487 Would you agree?

488 Mr. Battle: That's what lawyers are here for.

489 Mr. Courtney: Basically, he said, she said, is where we get down to.

490 Mr. Battle: But you have them all the time, and they're enforceable.

491 Mr. Courtney: So, as far as executive sessions and taking minutes, and I believe in transparency,
492 and I believe that the taxpayers have the right to know what goes on executive sessions. What I gather
493 from what you're saying is that this council has been going into executive session way too much,
494 according to your emails.

495 Mr. Battle: I'm not saying that. I'm not saying that at all. I haven't been to these meetings
496 enough to know what you go into executive session for and what you don't do. You're putting words in
497 my mouth, now.

498 Mr. Courtney: I didn't mean to do that, sir. I'm sorry.

499 Mr. Battle: That's okay.

500 Mayor Childs: Mr. Courtney, do you have any further questions?

501 Mr. Courtney: No, Mr. Mayor.

502 Mr. Ott: Mr. Battle, as being an elected official sitting on this dais, do I have the privilege to call
503 your office and leave a question for you?

504 Mr. Battle: If you ask me a question, I'm going to give you an answer.

505 Mr. Ott: That's what, that's what I wanted to know. Thank you. If it required a little bit of

Town Council Special Meeting
November 28, 2017

506 research, you can still do it? (Mr. Battle indicated yes.) Thank you.

507 Mr. Battle: If you asked me a question until council tells me not to. If council tells me not to, I
508 won't. But, right now, my thing is, is that I'm to serve all of council, including the individual members,
509 and if they have questions, I'll be glad to answer them as best I can. I don't; that kind of formality is a
510 little more than I'm used to.

511 Mr. Ott: Okay. Thank you very much,

512 Mayor Childs: Is there any further question?

513 Mr. Johnson: No, sir.

514 Mayor Childs: If not, thank you very much, Mr. Battle, for coming.

515 Mr. Courtney: Thank you, sir.

516 Mr. Battle: Do you want me to explain the Lazar suit to you in executive session, and if you want
517 me to stay for the whole meeting, or if you want me to be excused and do it at a later time, I do think
518 you should understand what's going on in the Lazar case, and what the issues are, and why the town has
519 been sued.

520 Mayor Childs: Mr. Battle ...

521 Mr. Stevens: I would.

522 Mayor Childs: Mr. Stevens, hold on will you? Would we like Mr. Battle to come back on this at a
523 later date, because we have a pretty full agenda tonight? Several councilmembers said yes.

524 Mr Battle: No problem. No problem at all.

525 Mayor Childs: Thank you. Thank you Mr. Battle.

526 Mr. Courtney: Thank you, Mr. Battle. I appreciate you coming out.

527 Mr. Battle: Am I excused?

528 Mayor Childs: Yes, you are. Thank you.

529 Mr. Ott: Thank you very much.

530 Mayor Childs: Okay, we stand adjourned on this special meeting. (6:24 p.m.)

531

532

533

534

535

536 Approved: January 23, 2018

537

538

538 VOTE: Yes No

539

540

541

542

543

544

545

546

Prepared and submitted by,

Debra E. Herrmann, CMC, Town Clerk

SURFSIDE BEACH TOWN COUNCIL

Robert F. Childs, III, Mayor

Ron Ott, Mayor Pro Tempore

