

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-001449

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SC Court of Appeals

Sylvia Lockaby,Appellant,

v.

City of Simpsonville, Janice Curtis, and Adam Randolph,Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Sylvia Lockaby,
Plaintiff,

v.

City of Simpsonville, Janice Curtis, and Adam
Randolph,
Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-23-00731

**ORDER GRANTING SUMMARY
JUDGMENT**

This matter is before the Court on Defendants’ Motion for Summary Judgment (“Motion”). By way of general background, Plaintiff Sylvia Lockaby, a former Simpsonville City Council (“Council”) member, seeks to recover damages under the South Carolina Tort Claims Act (the “Act”)¹ and/ or 42 U.S.C. § 1983 based on a ruling by the presiding officer at a Council meeting.

The Court heard the motion on April 25, 2019. In response to Plaintiff’s request for a continuance and her argument that she desired additional discovery prior to a ruling on the Motion, the Court granted Plaintiff an additional fifteen days to complete discovery and supplement the record after the hearing. Plaintiff availed herself of that opportunity and conducted an additional deposition, which was submitted to the Court for its review. The Court has considered all memoranda, arguments, and evidence presented to it in connection with the Motion and has determined that the Motion should be granted for the reasons set forth below.

¹ Per prior order of the Court, there are no claims under the Act against the individual defendants.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56, SCRPC. “Summary judgment is appropriate in those cases where plain, palpable, and undisputable facts exist on which reasonable minds cannot differ.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984).

The Court must view the facts and inferences in the light most favorable to the nonmoving party. See *Thomas v. Waters*, 315 S.C. 524, 527, 445 S.E.2d 659, 661 (Ct. App. 1994). When the nonmoving party bears the burden of proof as to an issue, a party seeking summary judgment may meet this standard by pointing out to the trial court “that there is an absence of evidence to support the nonmoving party’s case.” *Richardson v. State-Record Co.*, 330 S.C. 562, 566, 499 S.E.2d 822, 825 (Ct. App. 1998). “[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). A nonmoving party cannot evade summary judgment by creating and relying on “an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

If a motion has been properly made and supported in accordance with Rule 56, the non-moving party may not rest on its pleadings but must come forward with specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRPC; *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 580, 602 S.E.2d 389, 392 (2004). This showing must be based on evidence that would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002).

UNDISPUTED FACTS

Lockaby is a former member of the Council for the City of Simpsonville (“City”). All of the facts underlying her Complaint occurred at the February 9, 2016 Council meeting.²

I. Conduct of City Council Meetings.

Council meetings are controlled by the Simpsonville Code of Ordinances (“Code”) and Robert’s Rules of Order (“Robert’s Rules”).³ Lockaby has agreed that the November 24, 2015 revision of the Code is the version applicable to the February 9, 2016 Council meeting.⁴ At that time, the latest edition of “Robert’s Rules of Order, Newly Revised” was the 11th edition.⁵ Janice Curtis (“Curtis” or the “Mayor”) served as Mayor of the City and presided over Council meetings.⁶ Adam Randolph, an officer of the City’s Police Department, was also present at the meeting and functioned as the sergeant-at-arms.⁷

II. The February 9, 2016 City Council Meeting.

This lawsuit arises out of a debate between Lockaby and Curtis during the February 9, 2016 Council meeting. The exact exchange immediately prior to Lockaby’s exit from the meeting appears in the Minutes as follows:

Mayor Curtis: [Gavels 3 times] Order. Order. Order.

Councilmember Lockaby: You going to throw me out?

² The veracity of the minutes of that meeting is not in dispute and have been confirmed by the Plaintiff to the extent she was present. Lockaby Dep. at 20:25-21:13.

³ Code at 2-63 (“[e]xcept as otherwise required by state law or ordinance, all proceedings of council shall be governed by the latest edition of ‘Robert’s Rules of Order, Newly Revised[.]’”).

⁴ Lockaby Dep. at 11:5-13; *see also* Long Aff. at ¶ 4.

⁵ Long Aff. at ¶ 6.

⁶ Lockaby Dep. at 13:9-11; Code at §§ 2-34, -63.

⁷ Lockaby Dep. at 29:13-17; Code at § 2-67(b) (“Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the presiding officer, it shall be the duty of such law enforcement officer to remove from the city council meeting any person who is disturbing the proceedings of the city council.”).

Mayor Curtis: [Gavels] Order.

Councilmember Lockaby You going to threaten to throw me out?

Mayor Curtis: Keep it up and you'll find out.

Councilmember Lockaby: I guess I will.

Mayor Curtis: Okay.

Councilmember Lockaby: I'm keeping it up.

Mayor Curtis: [Gavels] Mr. Holmes will you please answer her question? Thank you.

Councilmember Lockaby: I know if you want to answer her question, I haven't asked one.

Mayor Curtis: Can I get the police officer from the back to enter the front, please?

Officer: Need her out?

Mayor Curtis: I need her out.

Officer: Councilmember Lockaby, will you come with me, please?

Mayor Curtis: We'll take a five minute recess. [Gavels.]

Councilmember Lockaby leaves the council chamber at 7:30pm.

Lockaby did not challenge any ruling from the presiding officer, although she acknowledged in her deposition that a member of Council could challenge or appeal a ruling from the presiding officer.⁸

The audio recording was paused when the Mayor gaveled the recess.⁹ With respect to what happened between the transcript portion of the Minutes and when Lockaby left City Hall, Lockaby testified as follows in her deposition:

A. I asked her if she was gonna throw me out like she just did Mr. Graham. She said if you keep on, I will; and I said, I'm keeping on, because I still had the floor, and about that time is when she called Mr. Randolph up.

Q Okay. What happened then?

⁸ Lockaby Dep. at 26:17-18, 17:8-15; *see also* Minutes of February 9, 2016 Council meeting showing there was an appeal of a ruling from the presiding officer earlier in the same meeting.

⁹ Long Dep. at 16:25-17:2.

A He said, do you need her out? She says, I need her out; so I gathered my stuff and I walked out.

Q Did you say anything else before you walked out?

A I don't believe I did.

Q Did you walk out by yourself?

A My husband was there with me.

[. . .]

Q Did you appeal the ruling from the mayor?

A No.

Q Did Officer Randolph, or anyone else, touch you?

A No, ma'am.

Q Were you, in any way, detained?

A I don't know what you mean by, detained. I was with an officer, for a few minutes there, while I was escorted out of the building.

Q Who was that?

A Officer Randolph.

Q Did he ever leave the council chambers?

A He walked out with me to make sure I got out of the building.

Q Are you sure about that?

A Yes.

Q Did he leave the building?

A He walked me outside of the door -- to the best of my knowledge, he walked me outside of the door, and then my husband and I went and got in the car.

Q Did anyone tell you what to do after you left the council chambers?

A No, they did not. There was nobody out there but me and my husband.

Q Did Officer Randolph say anything to you?

A I don't think he did.

Q Other than the language in the minutes, the transcript in the minutes, did anyone tell you that you needed to go anywhere specific, or needed to do anything specific?

A No.¹⁰

Q Will you look for me at paragraph 25, on page four, and it says there that you were, "Seized and escorted away from the council chambers in the custody of Defendants Randolph and Simpsonville." Can you tell me, based on your memory of that night, what that means?

A I was escorted out.

¹⁰ Lockaby Dep. at 25:22-27:23.

- Q But you mentioned earlier that no one touched you.
A He did not touch me; he escorted me out.
Q Okay. Do you believe that Officer Randolph was doing anything other than acting as the sergeant-at-arms for the meeting, at the direction of the mayor?
A That's exactly what he was doing.
Q Do you believe Mayor Curtis was doing anything other than acting as the presiding officer of the meeting?
A Yes.
Q Okay. Tell me about that.
A I believe she was. I believe she was being vindictive.
Q Okay. But you do agree, she was the presiding officer of the meeting at the time?
A Yes.
Q And as the presiding officer, she would perform all those functions of the chair, from Robert's rules?
A Yes. Or the code of conduct, whatever it was.
Q Okay. How do you contend you were unlawfully detained?
A I was escorted out of the meeting; I was not allowed to stay in the meeting; I was not allowed to represent my ward or the rest of the city.
Q Because of the direction given by the presiding officer at the meeting?
A Yes.
Q How were you arrested?
A I think you've already asked me, and I've answered this. He escorted me out of the building. I'm sure if I had not gone willingly, then I would have been physically escorted out.
Q But that didn't happen?
A He did not touch me.¹¹

As shown in this testimony, Lockaby did not challenge the ruling; no one touched her; and she was not given any instruction about where to go or what she could say after she left the meeting. Lockaby does not make any allegations other than with respect to this meeting.

DISCUSSION

With respect to the matters reflected in the Minutes, the Minutes are the only admissible evidence.

¹¹ Lockaby Dep. at 29:3-30:23.

A town council has the express duty to keep minutes of its proceedings which shall be a public record. S.C. Code Ann. § 5-7-250(b) (1976). Municipal records properly authenticated or verified are the only competent evidence of the proceedings of the transactions of the governing body. 5 E. McQuillan, *The Law of Municipal Corporations* § 14.05 (3d ed. 1989). Parol evidence cannot be admitted to explain, enlarge, or contradict minutes of the proceeding of a town council unless the minutes are incomplete or ambiguous. *Id.* § 14.07. Otherwise, parol evidence could render official minutes uncertain and unreliable so that the minutes would fail to afford dependable evidence of the proceedings of the municipal body. *Id.*

Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992).

I. Lockaby failed to avail herself of the remedy provided in Robert’s Rules.

As set forth above, Council meetings are subject to the Code, and the Code provides in § 2-63 that Council meetings are governed by Robert’s Rules. This is consistent with S.C. Code Ann. § 5-7-250(b) (“The council shall determine its own rules and order of business and shall provide for keeping minutes of its proceedings which shall be a public record.”).

Under § 24 of Robert’s Rules, any ruling by the presiding officer may be appealed. This includes the ruling in question here. Under that same rule, “[m]embers have no right to criticize a ruling of the chair unless they appeal from his decision.” The appeal provision is in place to give the Council as a whole the opportunity to correct any ruling made by the presiding officer immediately after it is made.¹² If Lockaby had appealed the ruling and received a second, the full Council would have voted and the majority would have prevailed.

Lockaby did not appeal the ruling at issue in this case, and therefore her claims are barred for failure to exhaust internal remedies. As set forth by the South Carolina Supreme Court,

¹² Lockaby’s counsel’s argument at the hearing that there was not time to object is simply incorrect. The requirement for an appeal at the time of a ruling in a meeting is not unlike the requirement for lawyers to make a contemporaneous objection at trial.

The general rule is that administrative remedies must be exhausted absent circumstances excusing application of the general rule. *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 442 S.E.2d 582 (1994); *Andrews Bearing Corp. v. Brady*, 261 S.C. 533, 201 S.E.2d 241 (1973). “A general exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that a pursuit of them would be a vain or futile act.” *Moore v. Sumter County Council*, 300 S.C. 270, 273–74, 387 S.E.2d 455, 458 (1990) (citing 82 Am.Jur.2d *Zoning and Planning* § 332 at 903 (1976)). Futility, however, must be demonstrated by a showing comparable to the administrative agency taking “a hard and fast position that makes an adverse ruling a certainty.” *Thetford Properties IV Ltd. P'ship v. U.S. Dep't of Hous. and Urban Dev.*, 907 F.2d 445, 450 (4th Cir.1990).

The question of whether to require the plaintiff to exhaust administrative remedies is a matter within the sound discretion of the trial judge. *Andrews Bearing Corp.*, 261 S.C. at 536, 201 S.E.2d at 243. A matter within the sound discretion of the trial judge will not be disturbed on appeal absent an abuse of discretion. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). “An abuse of discretion occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support.” *Id.*

Law v. S.C. Dep't of Corr., 368 S.C. 424, 438, 629 S.E.2d 642, 650 (2006).

The place to resolve these disputes is in the Council Chambers, not years later in a courtroom. These considerations are applicable regardless of whether the Mayor's ruling was correct. If Lockaby believed the Mayor's ruling was in error, she was free to challenge it at the meeting.

This is similar to the rule that members of a legislative body that are unhappy with the decision of a governmental entity lack standing to seek recourse in the courts. *Newman v. Richland Cnty. Historic Pres. Comm'n*, 325 S.C. 79, 82-84, 480 S.E.2d 72, 74–75 (1997). As set forth there,

The proper analogy is not to a corporation and its directors, but to a legislative body and its members. **We have been unable to find any case which permits a disappointed legislator to attack a decision of her own body, either through a declaratory judgment or through a direct “appeal” of the decision.**

Id. (emphasis added).

South Carolina courts are not in the business of second-guessing activity at city council meetings, and the Court will refrain from doing so in this case. The Court, in its discretion, finds summary judgment for the Defendants is appropriate on this basis.

II. Lockaby's claims are barred by legislative immunity.

The actions in question here are limited to one ruling by the Mayor as presiding officer and the actions of the sergeant-at-arms serving at the instruction of the presiding officer. As such, the actions at issue are subject to absolute legislative immunity and do not give rise to liability under 42 U.S.C. § 1983 or the South Carolina Tort Claims Act ("Act"). The Court finds that the action in question was legislative in nature, and that summary judgment is appropriate on this ground. Plaintiff's argument that there was not a vote by Council as a whole on the ruling is unavailing as Lockaby was free to appeal, which would have triggered a vote if seconded by another member of Council.

A. The Fourth Circuit has found that disciplinary actions taken by a local legislative body against a member of that body are part of the legislative process and are subject to legislative immunity.

Local legislative bodies are clothed with absolute immunity for their legislative actions. *Bruce v. Riddle*, 631 F.2d 272, 279 (4th Cir. 1980). "Absolute legislative immunity attaches to all actions taken in the sphere of legitimate legislative activity." *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998) (internal quotation marks omitted).

The Fourth Circuit has found this general rule applies to disciplinary action taken by a local legislative body against one of its members. *Whitener v. McWatters*, 112 F.3d 740, 741 (4th Cir. 1997). In that case, Whitener, a county supervisor, was disappointed with the outcome of a "straw vote" relating to committee assignments. *Id.* Following the vote, Whitener confronted several other supervisors. *Id.* When those supervisors complained, the board voted to censure Whitener and to strip him of his committee assignments for a year. *Id.* Whitener

brought action under 42 U.S.C. § 1983. *Id.* The Fourth Circuit affirmed the dismissal of Whitener’s complaint because the board’s actions “were protected by absolute legislative immunity.” *Id.* at 745. As stated in the opening paragraph of *Whitener*, “[b]ecause we hold that a legislative body’s discipline of one of its members is a core legislative act, we affirm.” *Id.* at 741. In reaching this result, the *Whitener* court traced the idea of immunity from the common law forward to the ratification of the United States Constitution, and reasoned,

Thus, Americans at the founding and after understood the power to punish members as a legislative power inherent even in “the humblest assembly of men.” This power, rather than the power to exclude those elected, is the primary power by which legislative bodies preserve their “institutional integrity” without compromising the principle that citizens may choose their representatives. Further, because citizens may not sue legislators for their legislative acts, legislative bodies are left to police their own members. Absent truly exceptional circumstances, it would be strange to hold that such self-policing is itself actionable in a court.

This history and long practice confirm that the disciplinary action taken by the [Defendant] against one of its members was legislative in nature. And [Plaintiff’s] own contentions confirm that his conduct was legislative. He alleges that he harbored an unpopular voting position on the Board; that he expressed his position using abusive language; and that the Board disciplined him for it. While he was arguably disciplined for speech, it was legislative speech, which is protected from executive or, in the United States, judicial interference, but not from the legislative body’s judgment. As legislative speech and voting is protected by absolute immunity, the exercise of self-disciplinary power is likewise protected.

Id. at 744 (internal citations omitted). Quite simply, “legislatures may discipline members for speech with the corollary immunity from executive or judicial reprisal for doing so.” *Id.* Under this authority, the Court grants summary judgment as to Lockaby’s claim under 42 U.S.C. § 1983.

B. The actions in question are also subject to legislative immunity under the Act and the law of South Carolina.

The Act “is the exclusive civil remedy available for any tort committed by a government entity, its employees, or its agents except as provided in § 15–78–70(b).” *Wells v. City of*

Lynchburg, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998); *see* S.C. Code Ann. § 15–78–200 (2005) (“Notwithstanding any provision of law, this chapter, the ‘South Carolina Tort Claims Act’, is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee’s official duty.”). Thus, if there is immunity under the Act, Lockaby has not stated any tort claims against the City.

The Act extends immunity to “legislative, judicial, or quasi-judicial action or inaction.” S.C. Code Ann. § 15-78-60(1). In addition, South Carolina courts recognize common law legislative immunity. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 637, 743 S.E.2d 808, 815 (2013) (“the Board’s entitlement to immunity is supported by common law that interprets and applies principles of legislative immunity, a doctrine that has not been supplanted by the [Act].”; *Richardson v. McGill*, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979) (“A sound public policy has long recognized an absolute immunity of members of legislative bodies *for acts in the performance of their duties.*”) (emphasis added).

Here, Lockaby’s claims stem from the conduct of a Council meeting at which Curtis was serving as presiding officer, Lockaby was present as member of Council, and Randolph was serving as sergeant-at-arms. There is no question but that the Mayor and Randolph were acting in the performance of their duties at all relevant times.

As stated by the South Carolina Attorney General’s Office,

[I]t appears the power of a legislative body to discipline one of its members would be considered an inherent “legislative power.” And, as we have expressed in prior opinions of this Office, these legislative powers are applicable to local legislative bodies such as a municipal council. Accordingly, as a legislative body, we believe it is likely a court would find a municipal council has the authority to discipline one of its members as an inherent legislative power. It follows that this inherent authority could include removal of a member from a council meeting.

2016 WL 3355910, at *3 (S.C.A.G. May 31, 2016)(citing *Whitener*, 112 F.3d at 744); *see also* S.C. Code Ann. § 5-7-250(b) (providing city councils may set their own rules and order of business); S.C. Code Ann. § 30-4-70(d) (providing that the South Carolina Freedom of Information Act does not prohibit the removal of persons from meetings).

In light of *Whitener* and similar South Carolina authority, the Defendants' actions relating to Lockaby at the February 9, 2016 Council meeting arise from legislative action and are immune from suit under the Act or by operation of common law legislative immunity. Therefore, summary judgment is appropriate at this time as to any claims made pursuant to the Act.

CONCLUSION

For these reasons, the Court finds there is no genuine issue as to any material fact and that judgment is appropriate as a matter of law with respect to all remaining claims. Accordingly, the Court grants Defendants' Motion for Summary Judgment.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Sylvia Lockaby vs. Simpsonville City Of , defendant, et al

Case Number: 2018CP2300731

Type: Order/Summary Judgment

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2019-07-01 09:32:48 page 13 of 13



Greenville Common Pleas

Case Caption: Sylvia Lockaby vs. Simpsonville City Of , defendant, et al

Case Number: 2018CP2300731

Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2019-08-09 09:14:38 page 2 of 2

Sylvia Lockaby
PLAINTIFF(S)

Simpsonville City Of et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (*CHECK REASON*):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter comes before the Court on Defendants' Motion to Dismiss. After hearing from each side, the motion is denied. The Defendants have 15 days from the date of this Order to answer the Amended Complaint. Further, the Plaintiff conceded at the hearing and the Court finds that Plaintiff has not asserted any individual claims under the South Carolina Tort Claims Act.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/20/2018 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Greenville Common Pleas

Case Caption: Sylvia Lockaby vs. Simpsonville City Of , defendant, et al

Case Number: 2018CP2300731

Type: Order/Electronic Form 4

So Ordered

s/ Edward W. Miller

Electronically signed on 2018-06-20 10:01:32 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CASE NO. 2018-CP-23-_____

Sylvia Lockaby,

Plaintiff,

vs.

City of Simpsonville, Janice Curtis,
Simpsonville Police Department, Adam
Randolph,

Defendants.

**SUMMONS
(JURY TRIAL DEMANDED)**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber, at his office, P. O. Box 50143, Columbia, South Carolina 29250, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

/s/ Taylor Smith

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Columbia, South Carolina
February 9, 2018

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-23-_____

Sylvia Lockaby,
Plaintiff,

vs.

City of Simpsonville, Janice Curtis,
Simpsonville Police Department, Adam
Randolph,
Defendants.

COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiff, complaining of the Defendants herein, alleges as follows:

1. The Plaintiff, Sylvia Lockaby (hereinafter “Plaintiff”), is a citizen and resident of the County of Greenville, State of South Carolina.
2. Defendant City of Simpsonville (hereinafter “Defendant Simpsonville”) is a municipal corporation the operates the City of Simpsonville, South Carolina, which is in Greenville County.
3. Defendant Janice Curtis (hereinafter “Mayor Curtis”) is a citizen and resident of the County of Greenville, State of South Carolina.
4. Defendant Simpsonville Police Department (hereinafter Defendant Simpsonville Police) is a governmental subdivision of the City of Simpsonville.
5. Defendant Adam Randolph (hereinafter “Defendant Randolph”) is a citizen and resident of the County of Greenville, State of South Carolina, and for all material purposes to this action, was an employee and officer of the Simpsonville Police Department.
6. This court has subject matter jurisdiction of this action and personal jurisdiction over the parties hereto.

7. The acts and omissions of the Defendants subject of this action occurred in Greenville County.

8. This action is brought pursuant to the South Carolina Tort Claims Act, pursuant to 42 U.S.C. § 1983, *et seq.*, and pursuant to all other applicable law.

9. In February 2016, Mayor Curtis and Plaintiff served as elected officials on the Simpsonville City Council. Mayor Curtis served as the Defendant City of Simpsonville's mayor and Defendant Randolph served as an officer of Defendant Simpsonville Police.

10. At all times material to this action, neither Defendant Simpsonville nor Defendant Simpsonville Police had enacted any restrictions on the conduct or speech of City Council members at meetings that was content neutral, was narrowly tailored to serve a governmental interest, and left open ample alternative means of expression.

11. At all times material to this action, neither Defendant Simpsonville nor Defendant Simpsonville Police had enacted any restrictions on the conduct or speech of City Council members at meetings at all.

12. At all times material to this action, Defendant Simpsonville Police and Defendant Randolph were responsible for assisting Defendant Simpsonville and Mayor Curtis in keeping order and maintaining public safety at the monthly business meetings of the Simpsonville City Council.

13. On February 9, 2016, Defendant Simpsonville had its monthly public business meeting in the city council chambers at 118 N.E. Main Street in Simpsonville, South Carolina.

14. Plaintiff, Defendant Rudolph and Mayor Curtis were present for the February 9, 2016 meeting.

15. At all times during this meeting, Plaintiff conducted herself lawfully and peaceably.

16. At no time during this meeting was Plaintiff's behavior disruptive of the meeting.

17. At the meeting, Simpsonville City councilmembers, including Plaintiff and Mayor Curtis, had discussion of a motion by councilmember Matthew Gooch (seconded by councilmember Ken Cummings) to give permission for Simpsonville City Administrator David Dyrhaug to complete an application with the Greenville Legislative Delegation Transportation Committee (GLDTC) for curb replacement at Aster Drive in Simpsonville.

18. During discussion of this of this motion, Plaintiff was recognized and had the floor.

19. Plaintiff began by asking a question of Administrator Dyrhaug about the specific application for curb replacement in Aster Drive as it related to the citywide plan of storm water displacement and infrastructure maintenance, but, before Plaintiff could ask a follow-up question of Dyrhaug, Mayor Curtis interrupted Plaintiff by accusing her of arguing the point, which according to Mayor Curtis, was outside the scope of discussion for the motion.

20. Plaintiff objected to the Mayor's characterization of her discussion with Administrator Dyrhaug and the Mayor's interpretation of the meaning of "discussion" by saying "I'm not arguing. I'm, I'm stating a fact that we have storm water issues all over the city. Is this opening a can of worms?"

21. Despite Mayor Curtis's attempts to interrupt Plaintiff's discussion with Administrator Dyrhaug, Plaintiff persisted in trying get an answer from Dyrhaug when Mayor Curtis declared Plaintiff was finished and began banging the gavel several times and yelling "Order!"

22. After Plaintiff questioned whether Mayor Curtis intended to eject Plaintiff from the meeting for pursuing the inquiry with Dyrhaug, Mayor Curtis indicated she was and told Officer Randolph to approach the front of council chambers.

23. After Defendant Randolph arrived near the front of the room, Mayor Curtis said to Defendant Randolph: "I need her out." At which point, Defendant Randolph said, "Councilmember Lockaby, will you come with me please?"

24. Plaintiff understood that she was being detained for disrupting the proceeding and that she was not free to remain in her councilmember seat.

25. Plaintiff obeyed Defendant Randolph's commands and made no attempt to flee the scene or in any fashion physically confront him.

26. Immediately thereafter, Plaintiff was seized and escorted away from the council chambers in the custody of Defendants Randolph and Simpsonville Police.

27. A copy of the minutes for the February 2016 business meeting, as approved by the city council for Defendant Simpsonville at the March 2016 meeting, are attached hereto as an exhibit to this complaint.

28. The City Council Chambers at 118 N.E. Main Street in Simpsonville, South Carolina is a traditional public forum.

29. The discussion of curb replacement and storm water issues is a matter for public concern for Simpsonville, South Carolina.

30. Plaintiff's conduct at the meeting in question was not disorderly and she did not breach any rules concerning the conduct of a councilmember when engaged in discussion in public session.

31. Plaintiff did not speak any "fighting words."

32. Defendant Randolph and Defendant Simpsonville Police did not have probable cause to believe Plaintiff was being disorderly or was in any way disrupting the proceeding.

33. Mayor Curtis' conduct in repeatedly interrupting Plaintiff while she had the floor, as well as Mayor Curtis' enforcement of her absurd interpretation of "discussion" to limit Plaintiff's ability to address a matter of public concern with Defendant Simpsonville's chief executive, effectively suppressed Plaintiff's ability to exercise oversight over Defendant Simpsonville and a matter of public concern that affects many city residents.

34. Mayor Curtis' conduct described in this complaint, including, but not necessarily limited to, her command to eject Plaintiff from the public meeting based upon the content of what Plaintiff was saying about a matter of public concern, was grossly negligent and evidences a reckless disregard for the Plaintiff's rights and the freedom of speech and thought during the Simpsonville council meetings.

35. None of the Defendants had any probable cause to believe that Plaintiff was committing or had committed any crime.

36. None of the Defendants had any reasonable belief that they could lawfully remove the Plaintiff from the meeting.

37. The Defendants were grossly negligent and failed to exercise even slight care, including, but not necessarily limited to, in the following respects:

- a. In seizing Plaintiff without probable cause;
- b. In failing to exercise even slight care to avoid violating Plaintiff's right to be free from an unreasonable seizure and free from suppression of her freedom of speech;
- c. In causing Plaintiff to be unlawfully detained; and
- d. In failing to take that degree of skill and care which a reasonable and prudent person would have done under the same or similar circumstances.

38. The acts and omissions of the Defendants have caused Plaintiff to sustain damages and entitle Plaintiff to recover damages from the Defendants.

39. Plaintiff has suffered damages, including, but not limited to, humiliation, public ridicule, and loss of personal reputation as a consequence of this arrest, as well as the expense of hiring an attorney to vindicate her constitutional rights.

40. The conduct of the Defendants and their agents and servants toward Plaintiff was grossly negligent and violated state and federal law.

FOR A FIRST CAUSE OF ACTION
(Civil/Constitutional Rights Violation – 42 U.S.C. § 1983)

41. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

42. Defendants falsely and wrongfully arrested Plaintiff while Plaintiff was exercising her clearly established, fundamental, constitutional rights of free speech and petition.

43. This false and wrongful arrest was in violation of Plaintiffs' First and Fourth Amendment rights as incorporated by the Fourteenth Amendment of the United States Constitution.

44. At the time Plaintiff was arrested, Plaintiff was exercising her rights guaranteed under the First Amendment to the United States Constitution and fulfilling her duty of oversight over matters of public concern for the benefit of residents of the City of Simpsonville.

45. Defendants Mayor Curtis and Randolph are named in this lawsuit and sued in their individual capacity for purposes of damages pursuant to 42 U.S.C. § 1983 and the underlying decisional law issued by the United States Supreme Court and its inferior courts.

46. Mayor Curtis was deliberately indifferent towards Plaintiff's First and Fourth Amendment Constitutional rights by ordering Defendant Randolph to arrest Plaintiff for asking questions of the City Administrator when Plaintiff had a constitutional right to do so in the Simpsonville council chambers, a traditional public forum, during an open public meeting.

47. Defendant Curtis was deliberately indifferent and demonstrated that indifference by giving obviously unconstitutional orders to Defendants Randolph and Simpsonville Police to arrest the Plaintiff in clear violation of Plaintiff's fundamental right of speech.

48. Defendant Randolph had a sworn duty to preserve, protect, and defend the Constitution of South Carolina and of the United States of America and was required by the laws of South Carolina and the United States of America to refuse to obey the unlawful order by Mayor Curtis to arrest Plaintiff who was engaged in lawful and peaceful speech in violation of Plaintiff's First and Fourth Amendment Constitutional Rights as incorporated by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

49. Even if Defendant Randolph was just following the directives given to him by a superior, he still violated his sworn duty by arresting the Plaintiff.

50. Plaintiff seek damages and punitive damages in an amount to be determined by a jury when informed of the facts in this matter and properly charged with the law by this court. Plaintiffs also seek attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

FOR A SECOND CAUSE OF ACTION
(Gross Negligence)

51. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

52. Plaintiff was arrested without probable cause by the Defendants, who did not have an objective, good-faith belief that Plaintiff was guilty of any offense.

53. Defendants Simpsonville and Simpsonville Police failed to properly train and supervise the agents and employees of the Simpsonville Police.

54. Defendant Simpsonville and Simpsonville Police were grossly negligent in training and supervising its staff and officers, including, but not necessarily limited to, Defendant Randolph.

55. Defendant Simpsonville and Simpsonville Police owed Plaintiff a duty to properly train and supervise its personnel and to refrain from arresting Plaintiff without probable cause.

56. Defendant Simpsonville and Simpsonville Police and its agents and servants breached this duty and were grossly negligent, including, but not necessarily limited to, in the following respects:

- a. In arresting Plaintiff without probable cause to believe she had committed a crime;
- b. In failing to perform an adequate investigation;
- c. In failing to exercise even slight care to avoid violating Plaintiff's right to be free from an unreasonable seizure; and
- d. In causing Plaintiff to be unlawfully detained against her will.

57. As a proximate result, Plaintiff sustained damages.

FOR A THIRD CAUSE OF ACTION
(False Imprisonment/Seizure)

58. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

59. The Defendants falsely arrested and falsely imprisoned Plaintiff.

60. The Defendants, without cause or legal justification, restrained and confined Plaintiff.

61. The restraint was intentional and unlawful and was against Plaintiff's will.

62. As a result, Plaintiff was confined in police custody.

63. Plaintiff suffered embarrassment, humiliation, emotional distress, and slander of her name and in that she was arrested and placed in confinement for no legal cause.

64. As a direct and proximate result, Plaintiff is entitled to recover actual damages, punitive damages, and the costs of this action.

WHEREFORE, the Plaintiff prays:

- a) For judgment against the Defendants awarding the Plaintiff actual compensatory damages;
- b) For judgment against the Defendants awarding the Plaintiff punitive damages;
- c) For judgment against the Defendants awarding the Plaintiff attorneys' fees;
- d) For judgment against the Defendants awarding the Plaintiff the costs of this action; and
- e) For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Taylor Smith

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Sylvia Lockaby,

Plaintiff,

v.

City of Simpsonville, Janice Curtis,
Simpsonville Police Department, Adam
Randolph,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-23-00731

MOTION TO DISMISS

Pursuant to Rule 12, SCRCP, and for the reasons set forth below, the Defendants move the Court to dismiss this action in whole or in part. The grounds for this motion are as follow:

1. Defendants' actions with respect to Lockaby in the Council meeting in question are subject to absolute legislative immunity and do not give rise to liability under 42 U.S.C. § 1983 or the South Carolina Tort Claims Act. *See Whitener v. McWatters*, 112 F.3d 740, 741 (4th Cir. 1997) (holding disciplinary actions taken by a legislative body against a member of that body are part of the legislative process, and thus, when a county board censured one its members for uncivil conduct toward other board members, the censured board member's § 1983 suit was barred by legislative immunity and dismissed); S.C. Code Ann. § 15-78-60 (providing immunity extends to "legislative, judicial, or quasi-judicial action or inaction").
2. As admitted by Lockaby, her state law claims are brought pursuant to the South Carolina Tort Claims Act. (Complaint, ¶ 8). As provided in S.C. Code Ann. § 15-78-200, individuals may not be named as defendants for claims arising under the Tort Claims Act. "When a plaintiff claims an employee of a state agency acted negligently in the performance of his job, the South Carolina Tort Claims Act requires a plaintiff to sue the agency for which an employee works, rather than suing the employee directly." *Faile v. South Carolina Dep't of Juvenile Justice*, 350 S.C. 315, 321 n. 1, 566 S.E.2d 536, 539 n. 1 (2002) (citing S.C.Code Ann. § 15-78-70(c)). Therefore, any state law claims against the individual defendants must be dismissed.

In addition to the grounds given above, these defendants reserve their right to submit additional materials and a memorandum further supporting the grounds for their motion.

Respectfully submitted,

By: s/ Sarah P. Spruill
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April 17, 2018

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-23-00731

Sylvia Lockaby,

Plaintiff,

vs.

**City of Simpsonville, Janice Curtis, and
Adam Randolph,**

Defendants.

**RETURN AND MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

The Plaintiff submits this return and memorandum in opposition to Defendants' motion to dismiss the Complaint in the above-captioned action.

Defendants motion to dismiss states two grounds for dismissal of Plaintiff's Amended Complaint¹: 1) "Defendants' actions with respect to Lockaby in the Council meeting in question are subject to absolute immunity and do not give rise to liability under 42 U.S.C. § 1983 or the South Carolina Tort Claims Act" and 2) "[A]ny state law claims against individuals must be dismissed" because the S.C. Tort Claims Act does not allow individuals to be named as defendants for claims arising under the Act. The Plaintiff respectfully asks the Court to accurately construe the words of Plaintiff's complaint against Defendants arguments in their motion and memorandum of law and deny it the relief it seeks at this threshold stage of this proceeding.

"A motion to dismiss a claim pursuant to Rule 12(b)(6), SCRCR, must be based solely on the allegations set forth on the face of the complaint. The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on

¹ Defendants' motion to dismiss (filed April 17, 2018) seeks dismissal of Plaintiff's complaint. Plaintiff amended the summons and complaint on May 24, 2018 to remove a party from this action and change the employer for Defendant Randolph. All other allegations were left unchanged. Plaintiff views Defendants' motion as seeking dismissal of the Amended Complaint.

any theory of the case. A judgment on the pleadings is considered to be a drastic procedure by our courts. Therefore, pleadings in a case should be construed liberally[.]” Overcash v. S.C. Elect. & Gas Co., 356 S.C. 165, 588 S.E.2d 116, 118 (Ct. App. 2003).

The Complaint accurately states that at the City of Simpsonville business meeting in question, Plaintiff “at all times material to this case conducted herself lawfully and peaceably and “at no time during this meeting was Plaintiff’s behavior disruptive of the meeting.” ¶ 14-15. At this meeting the Plaintiff and Defendant Curtis were discussing whether Council should give permission for Simpsonville City Administrator David Dyrhaug to complete an application with the Greenville Legislative Delegation Transportation Committee (GLDTC) for curb replacement at Aster Drive in Simpsonville. ¶ 16. This discussion of storm water issues and curb replace is a matter for public concern for Simpsonville, South Carolina. ¶ 28. During discussion of the motion, Plaintiff was recognized and had the floor. ¶ 17. The official minutes of this business meeting, which are attached to the Amended Complaint as an exhibit, capture much of what happened next:

Councilmember Lockaby: Mr. Dryhaug, I'm looking straight at you. Are we opening a can of worms when we do this? I'm just asking the question.
 Mr. Dyrhaug: I don't have an answer for that, but I..
 Councilmember Lockaby: Well.
 Mr. Dyrhaug: The issue is that so when this road was resurfaced that the reveal on the curb was diminished and that's caused an issue of storm water coming from the road onto private properties.
 Councilmember Lockaby: And we have storm water issues all over the city.
 Mayor Curtis: [Not intelligible]
 Councilmember Lockaby: I'm still speaking, please.
 Mayor Curtis: Yes, but you're arguing the point and this isn't a time for argument. You can ask questions, but this isn't argument.
 Councilmember Lockaby: I'm not arguing. I'm, I'm stating a fact that we have storm water issues all over the city. Is this opening a can of worms?
 Mayor Curtis: Well, ask our attorney.
 Councilmember Lockaby: I was asking Mr. Dryhaug, I haven't even gotten to the attorney yet.
 Mayor Curtis: Well, okay, that's fine. Mr. Holmes, could you...
 Councilmember Lockaby: I'm not finished.
 Mayor Curtis: You are now. [Gavels] Thank you. Mr. Holmes...
 Councilmember Lockaby: I am not.
 Mayor Curtis: Yes, you are. Mr. Holmes, could you...

Councilmember Lockaby: [talks over, not intelligible] ...we had to do...
 Mayor Curtis: [Gavels 3 times] Order. Order. Order.
 Councilmember Lockaby: You going to throw me out?
 Mayor Curtis: [Gavels] Order.
 Councilmember Lockaby You going to threaten to throw me out?
 Mayor Curtis: Keep it up and you'll find out.
 Councilmember Lockaby: I guess I will.
 Mayor Curtis: Okay.
 Councilmember Lockaby: I'm keeping it up.
 Mayor Curtis: [Gavels] Mr. Holmes will you please answer her question? Thank you.
 Councilmember Lockaby: I know if you want to answer her question, I haven't asked one.
 Mayor Curtis: Can I get the police officer from the back to enter the front, please?
 Officer: Need her out?
 Mayor Curtis: I need her out.
 Officer: Councilmember Lockaby, will you come with me, please?
 Mayor Curtis: We'll take a five-minute recess. [Gavels.]

“Plaintiff obeyed Defendant Randolph’s commands and made no attempt to flee the scene or in any fashion physically confront him.” ¶ 24. “Immediately thereafter, Plaintiff was seized and escorted away from the council chambers in the custody of Defendants Randolph and Simpsonville.” ¶ 25.

Defendants’ motion to dismiss argues that the actions taken by Defendant Mayor Jane Curtis in removing Plaintiff from the business meeting are subject to absolute legislative immunity. For this idea, Defendants rely on *Whitener v. McWatters*, 112 F.3d 740, 741 (4th Cir. 1997) which held that disciplinary actions taken by a legislative body against a member of that body are part of the legislative process, and thus, when a county board censured one its members for uncivil conduct toward other board members, the censured board member’s § 1983 suit was barred by legislative immunity and dismissed. For several important reasons *Whitener* should not be relied on in this matter. Like the Plaintiff, *Whitener* was a board member of the public body and meeting in question. But unlike Plaintiff, the Defendants in that matter claimed that *Whitener*’s conversations with them outside of an official public meeting of their body, “exceeded the bounds of decency and civility.” *Whitener* at 741. The Amended Complaint provides no information as to

why Defendant Curtis interrupted and ejected Plaintiff from the meeting, but it does provide that Plaintiff's conduct "was not disorderly and she did not breach any rules concerning the conduct of a councilmember when engaged in discussion in public session." ¶ 29. Regardless of the allegations, which do bind the Court at this early stage in the matter, and if looking at this argument in a light most favorable to Defendants, it is simply not possible to reasonably view Plaintiff's words as exceeding the bounds of decency and civility. Secondarily, in *Whitener*, the Fourth Circuit Court of Appeals was looking at an action taken by the full board of supervisors (upon the recommendations of a committee appointing by the full board to "investigate the complaint and make recommendations"). *Whitener* at 741. "This case concerns the vote of the Board of Supervisors in policing its own ethics violations, obviously a core legislative activity." *Id.* The *Whitener* court said that the Plaintiff in that case "may not challenge legislative voting or inquire as to how votes are made" ... "[t]his brings the case directly into the bar of legislative immunity." *Id.* at 742. The Amended Complaint does not contain an allegation and this case is not about a vote by the Simpsonville City Council to in some way discipline Plaintiff. The allegations of the Amended Complaint make clear that the decision to eject and arrest Plaintiff was Defendant Mayor Curtis' alone. Finally, in *Whitener*, the Plaintiff also argued the board's decision to censure him was a violation of his First Amendment rights under the U.S. Constitution, which the Fourth Circuit Court of Appeals did not buy. *Whitener* at 745. "Whitiner was disciplined for his lack of decorum, not for expressing his view on policy." *Id.* There is no allegation in the Amended Complaint to suggest that Plaintiff was arrested for a lack of decorum. The Amended Complaint provides that in fact, Plaintiff was discussing a matter of policy, storm water issues and curb replacement, during the business meeting of the public body, when she was arrested. The violations

of Plaintiffs rights in this matter did not arise from either the legislative process or any legislative activity that would entitle Defendants to absolute legislative immunity in this matter.

Defendants also seek dismissal of Plaintiff's second and third causes of action in the Amended Complaint because the South Carolina Tort Claims Act provides that "immunity extends to legislative, judicial, or quasi-judicial action or inaction." S.C. Code Ann. § 15-78-60. As discussed above, the allegations of the complaint do not provide facts sufficient to suggest this matter concerns a legislative act but even if they did, legislative immunity would likely still not apply. "Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts." *Bruce v. Riddle*, 631 F.2d 272, 279 (C.A.4 (S.C.), 1980). The Amended Complaint provides that Plaintiff was arrested without any probable cause to suggest Plaintiff was committing or had committed a crime. ¶ 34. Furthermore, the South Carolina Supreme Court has held that "individual members of a local county council are not entitled to absolute immunity." *Brown v. County of Berkeley*, 622 S.E.2d 533, 366 S.C. 354 (S.C. 2005) (citing *Richardson v. McGill*, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979)(noting that privilege depends not on rigid requirements but it is determined by consideration of public policy)). "Dismissal under Rule 12(b)(6) is seldom appropriate when the defense of immunity is pleaded. In such cases the court must determine whether the public official acted within the scope of his discretionary authority." *Jensen v. South Carolina Dept. of Social Services*, 377 S.E.2d 102, 297 S.C. 323 (S.C. App. 1987). A grant of absolute legislative immunity to the Defendants is not appropriate in this matter.

Defendants' second ground argued for dismissal of the Amended Complaint provides that in S.C. Code Ann. § 15-78-200 (the South Carolina Tort Claims Act), "individuals may not be named as defendants for claims arising under" it. "Therefore, any state law claims against the

individual defendants must be dismissed” the motion provides. Plaintiff does seek liability under the South Carolina Tort Claims Act against the individuals Defendants but instead seeks liability under 42 U.S.C. § 1983 for the actions of those persons. “Personal-capacity suits . . . seek to impose individual liability upon a government officer for actions taken under color of state law. Thus, “[o]n the merits, to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right.” *Hafer v. Melo*, 502 U.S. 21, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991)(quoting *Kentucky v. Graham*, 473 U.S. 159, 166, 105 S.Ct. 3099, 3105 (1985)). Dismissal of the individual Defendants (or the claims against them) is inappropriate in this matter.

For foregoing reasons and under any and all applicable law, Plaintiff respectfully asks the Court to deny Defendants’ Motion to Dismiss.

Respectfully submitted,

/s/ Taylor Smith

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Sylvia Lockaby,
Plaintiff,

C.A. No. 2018-CP-23-00731

v.

City of Simpsonville, Janice Curtis, Adam
Randolph,
Defendants.

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

The Defendants in this matter, City of Simpsonville, Janice Curtis, Simpsonville Police Department¹, and Adam Randolph, file this memorandum in further support of their Motion to Dismiss. As set forth below, Sylvia Lockaby cannot pursue the claims raised in her Complaint and this action should be dismissed.

BACKGROUND

Sylvia Lockaby is a former member of the City Council (“Council”) for the City of Simpsonville (“City”). (Complaint, ¶ 9). All of the facts underlying her Complaint occurred at the February 9, 2016 City Council meeting. Lockaby attached a copy of the meeting minutes to her Complaint (“Exhibit,” attached as Exhibit 1).

At the time of the meeting, Janice Curtis served as mayor of the City and Lockaby was a member of Council. (Complaint, ¶ 9). As mayor, Curtis presided over Council meetings.

¹ Plaintiff has filed an Amended Complaint in this matter to remove the Simpsonville Police Department as a separate defendant. The Defendants do not object to the amendment. References here are to the original complaint; however, the amended complaint does not change these allegations.

(Simpsonville Code of Ordinances (“Code” at §§ 2-34, -63).² In February 2016, the Code provided as follows,

Any person who speaks at a city council meeting shall conduct himself or herself in a manner appropriate to the decorum of the meeting and shall not use any profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct. Any person who makes such remarks or otherwise engages in disorderly conduct which disrupts or otherwise impedes the orderly conduct of a city council meeting shall, at the discretion of the presiding officer, be barred from further audience before city council during that meeting and may be removed from the building.

(Code at § 2-67(a)).

Adam Randolph, an officer of the City’s Police Department, was also present at the meeting and functioned as the sergeant-at-arms. (Code at § 2-67(b)). As set forth in this section,

Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the presiding officer, it shall be the duty of such law enforcement

² The portion of the Code relating to Council and its meetings (Chapter 2, Article II, Divisions 1 and 2) as of February 9, 2016 is attached as Exhibit 2. The Court may take judicial notice of facts not subject to reasonable dispute “at any stage of the proceeding.” Rule 201, SCRE. Although generally motions to dismiss must be considered based on the allegations in the complaint alone, courts may take notice of items in the public record in deciding whether a plaintiff has stated a claim. *See Hall v. Virginia*, 385 F.3d 421, 424 n. 3 (4th Cir. 2004); *Am. Chiropractic v. Trigon Healthcare*, 367 F.3d 212, 234 (4th Cir. 2004) (providing the Court may take judicial notice of documents which are “integral to and explicitly relied on in the complaint” and authentic to determine whether Plaintiff has stated a claim). Moreover, “a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the document. . . . Otherwise, a plaintiff with a legally deficient claim could survive a motion to dismiss simply by failing to attach a dispositive document on which it relied.” *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993) (cited with approval in *Conner v. Nucor Corp.*, No. 2:14-CV-4145, 2015 WL 5785510 at *11 (D.S.C. Sept. 30, 2015)). In evaluating a complaint, the Court is “not obliged to accept allegations that ‘represent unwarranted inferences, unreasonable conclusions, or arguments,’ or that ‘contradict matters properly subject to judicial notice or by exhibit.’” *Massey v. Ojaniit*, 759 F.3d 343, 353 (4th Cir. 2014). To the extent Lockaby’s Complaint is based on the applicable ordinances and rules relating to City Council meetings, the Court may consider those rules and ordinances.

officer to remove from the city council meeting any person who is disturbing the proceedings of the city council.

This lawsuit arises out of a debate between Lockaby and Curtis during the meeting. There is no allegation in the Complaint, and there is no indication in the minutes that Lockaby appealed any question of order raised by Curtis as the presiding officer to Council as a whole. (Exhibit). Instead, Lockaby continued to speak after Curtis, as presiding officer, repeatedly sought order first by gavel and then by asking for "Order." (*Id.*).

The exact exchange immediately prior to Lockaby exiting the meeting was as follows:

Mayor Curtis: [Gavels 3 times] Order. Order. Order.

Councilmember Lockaby: You going to throw me out?

Mayor Curtis: [Gavels] Order.

Councilmember Lockaby You going to threaten to throw me out?

Mayor Curtis: Keep it up and you'll find out.

Councilmember Lockaby: I guess I will.

Mayor Curtis: Okay.

Councilmember Lockaby: I'm keeping it up.

Mayor Curtis: [Gavels] Mr. Holmes will you please answer her question? Thank you.

Councilmember Lockaby: I know if you want to answer her question, I haven't asked one.

Mayor Curtis: Can I get the police officer from the back to enter the front, please?

Officer: Need her out?

Mayor Curtis: I need her out.

Officer: Councilmember Lockaby, will you come with me, please?

Mayor Curtis: We'll take a five minute recess. [Gavels.]

Councilmember Lockaby leaves the council chamber at 7:30pm.

(*Id.*). The meeting ended thereafter. (*Id.*). As reflected in the Minutes, there was no instruction to arrest anyone. (*Id.*).

ARGUMENT

The Complaint in this case does not present any basis for liability on the part of any of the Defendants under 42 U.S.C. § 1983 or the South Carolina Tort Claims Act (the “Act”). As set forth above and in the Code, Curtis was presiding over the Council meeting and Randolph was acting as sergeant-at-arms at the time of the conduct alleged in the Complaint. Therefore, their actions are entitled to legislative immunity and this case must be dismissed.

I. The Fourth Circuit has found that disciplinary actions taken by a local legislative body against a member of that body are part of the legislative process and are subject to legislative immunity.

Local legislative bodies are clothed with absolute immunity for their legislative actions. *Bruce v. Riddle*, 631 F.2d 272, 279 (4th Cir.1980). The Fourth Circuit has found this general rule applies to disciplinary action taken by a local legislative body against one of its members. *Whitener v. McWatters*, 112 F.3d 740, 741 (4th Cir. 1997). In that case, Whitener, a county supervisor, was disappointed with the outcome of a “straw vote” relating to committee assignments. *Id.* Following the vote, Whitener confronted several other supervisors. *Id.* When those supervisors complained, the board voted to censure Whitener and to strip him of his committee assignments for a year. *Id.* Whitener brought action under 42 U.S.C. § 1983. *Id.* The Fourth Circuit affirmed the dismissal of Whitener’s complaint on the grounds that the board’s actions “were protected by absolute legislative immunity.” *Id.* at 745.

In reaching this result, the *Whitener* court traced the idea of immunity from the common law forward to the ratification of the United States Constitution, and reasoned,

Thus, Americans at the founding and after understood the power to punish members as a legislative power inherent even in “the humblest assembly of men.” This power, rather than the power to exclude those elected, is the primary power by which legislative bodies preserve their “institutional integrity” without compromising the principle that citizens may choose their representatives. Further, because citizens may not sue legislators for their legislative acts,

legislative bodies are left to police their own members. Absent truly exceptional circumstances, it would be strange to hold that such self-policing is itself actionable in a court.

This history and long practice confirm that the disciplinary action taken by the [Defendant] against one of its members was legislative in nature. And [Plaintiff's] own contentions confirm that his conduct was legislative. He alleges that he harbored an unpopular voting position on the Board; that he expressed his position using abusive language; and that the Board disciplined him for it. While he was arguably disciplined for speech, it was legislative speech, which is protected from executive or, in the United States, judicial interference, but not from the legislative body's judgment. As legislative speech and voting is protected by absolute immunity, the exercise of self-disciplinary power is likewise protected.

Id. at 744 (citations omitted). Quite simply, “legislatures may discipline members for speech with the corollary immunity from executive or judicial reprisal for doing so.” *Id.* Under this authority, Lockaby's claim under 42 U.S.C. § 1983 must be dismissed.

II. The actions in question are also subject to legislative immunity under the Act and the law of South Carolina.

The Act “is the exclusive civil remedy available for any tort committed by a government entity, its employees, or its agents except as provided in § 15–78–70(b).” *Wells v. City of Lynchburg*, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct.App.1998); *see* S.C. Code Ann. § 15–78–200 (2005) (“Notwithstanding any provision of law, this chapter, the ‘South Carolina Tort Claims Act’, is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty.”). Thus, if there is immunity under the Act, Lockaby has not stated any tort claims against the Defendants.

The Act extends immunity to “legislative, judicial, or quasi-judicial action or inaction.” S.C. Code Ann. § 15-78-60(1). In addition, South Carolina courts recognize common law legislative immunity. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 637, 743 S.E.2d 808, 815 (2013) (“the Board's entitlement to immunity is supported by common law that interprets and applies principles of legislative immunity, a doctrine that has not been

supplanted by the [Act].”; *Richardson v. McGill*, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979) (“A sound public policy has long recognized an absolute immunity of members of legislative bodies for acts in the performance of their duties.”).

Here, Lockaby’s claims all stem from the conduct of a Council meeting at which Curtis was serving as presiding officer, Lockaby was present as member of City Council, and Randolph was serving as sergeant-at-arms.³ In a recent opinion, the South Carolina Attorney General’s Office provided the following guidance,

[I]t appears the power of a legislative body to discipline one of its members would be considered an inherent “legislative power.” And, as we have expressed in prior opinions of this Office, these legislative powers are applicable to local legislative bodies such as a municipal council. Accordingly, as a legislative body, we believe it is likely a court would find a municipal council has the authority to discipline one of its members as an inherent legislative power. It follows that this inherent authority could include removal of a member from a council meeting.

2016 WL 3355910, at *3 (S.C.A.G. May 31, 2016), *citing Whitener*; *see also* S.C. Code Ann. § 5-7-250(b) (providing city councils may set their own rules and order of business); S.C. Code Ann. § 30-4-70(d) (providing that the South Carolina Freedom of Information Act does not prohibit the removal of disruptive persons from meetings).

In light of *Whitener* and similar South Carolina authority, the Defendants’ actions relating to Lockaby at the February 9, 2016 Council meeting arise from legislative action and are not actionable under the Act or by operation of common law legislative immunity. Therefore, Lockaby’s tort claims must be dismissed.

³ To the extent Lockaby disagreed with any ruling from the chair, she was free to appeal that ruling at the time it was made. *See* Code at § 2-63 (stating City Council meetings to be governed by “Robert’s Rules of Order, Newly Revised”); Robert’s Rules of Order, Newly Revised § 24 (11th ed. 2013) (providing for appeal from rulings of a meeting chair and providing “[m]embers have no right to criticize a ruling of the chair unless they appeal from his decision.”).

III. There is not a claim against the individual defendants under the Act.

In the event the tort claims are not dismissed in their entirety, the only proper defendant to those claims is the City of Simpsonville. As admitted by Lockaby, her state law claims are brought pursuant to the Act. (Complaint, ¶ 8). As provided in S.C. Code Ann. § 15-78-200 and argued more fully in Defendants' Motion to Dismiss, individuals may not be named as defendants for claims arising under the Tort Claims Act. Therefore, any state law claims against the individual defendants must be dismissed.

CONCLUSION

For these reasons, Defendants ask that this action be dismissed.

Respectfully submitted,

By: s/ Sarah P. Spruill
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May 25, 2018

EXHIBIT 1

**Minutes of the
Simpsonville City Council
Business Meeting
February 9, 2016
6:30 p.m.
City Council Chambers – 118 N.E. Main Street**

CALL TO ORDER – Mayor Curtis

COUNCIL PRESENT – Councilmember Gooch, Councilmember Graham, Councilmember Hulehan, Councilmember Braswell, Councilmember Cummings, Councilmember Lockaby, Mayor Curtis

PLEDGE OF ALLEGIANCE

PUBLIC HEARING – Greenville County Redevelopment Authority 2016 Program Year Annual Action Plan

APPROVAL OF MINUTES

- Motion by Councilmember Lockaby with a 2nd by Councilmember Gooch to approve minutes from January 12, 2016 and January 26, 2016. Motion carried unanimously.

SPECIAL RECOGNITION – Coach Greg Porter, 2015 SC Football Coach of the Year

CITIZEN COMMENTS - None

COUNCIL COMMENTS

- Hillcrest High School Scholastic Achievements – Councilmember Graham
- Hillcrest High School Athletic Achievements – Councilmember Graham
- Budget Comments – Councilmember Gooch
- Update on the Grandview and Davenport Intersection – Councilmember Gooch
- Motion by Councilmember Graham with a 2nd by Councilmember Lockaby to appeal Council Comments to allow further comments on non-voting items. Roll call vote taken, Yes=2, No=5. Councilmembers Gooch, Hulehan, Braswell, Cummings and Mayor Curtis voting No. Motion failed.

BUSINESS

a. *Matters Referred by the Planning Commission*

- Motion by Councilmember Graham with at 2nd by Councilmembers Cummings and Braswell pass 2nd Reading of AXZ-2016-02, Proposed Annexation at 700 Fairview Road. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmembers Gooch and Braswell to pass 1st Reading of TX-2016-01, Electronic Message Display Signs in the R-OI District. Motion carried unanimously.
- SP-2016-03, Harrison Bridge Center ID, Major Change, Withdrawn.

b. *Other Business*

- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings to pass Resolution 2016-01, GCRA Annual Action Plan. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to pass Resolution 2016-02, Safety Policy. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to appoint Stephanie Kelley to the Election Commission. Motion passed unanimously.
- Motion by Councilmember Lockaby with a 2nd by Councilmember Graham to accept the bid for Wetlands Remediation from Apex Companies. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to accept the Mutual Aid Agreements as written. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings giving City Administrator, David Dyrhaug permission for completing application with GLDTC for curb replacement at Aster Drive.
- On written request from Councilmember Lockaby:
Councilmember Lockaby was recognized by Mayor Curtis and had the floor.
Councilmember Lockaby: Are we opening a can of worms? Cause if we fix this...
Mayor Curtis: Who are you talking to?
Councilmember Lockaby: I'm looking at Mr. Dryhaug.
Mayor Curtis: Well you didn't identify anyone...excuse me.
Councilmember Lockaby: Mr. Dryhaug, I'm looking straight at you. Are we opening a can of worms when we do this? I'm just asking the question.
Mr. Dyrhaug: I don't have an answer for that, but I...
Councilmember Lockaby: Well.
Mr. Dyrhaug: The issue is that so when this road was resurfaced that the reveal on the curb was diminished and that's caused an issue of storm water coming from the road onto private properties.
Councilmember Lockaby: And we have storm water issues all over the city.
Mayor Curtis: [Not intelligible]
Councilmember Lockaby: I'm still speaking, please.
Mayor Curtis: Yes, but you're arguing the point and this isn't a time for argument. You can ask questions, but this isn't argument.
Councilmember Lockaby: I'm not arguing. I'm, I'm stating a fact that we have storm water issues all over the city. Is this opening a can of worms?
Mayor Curtis: Well, ask our attorney.
Councilmember Lockaby: I was asking Mr. Dryhaug, I haven't even gotten to the attorney yet.
Mayor Curtis: Well, okay, that's fine. Mr. Holmes, could you...
Councilmember Lockaby: I'm not finished.
Mayor Curtis: You are now. [Gavels] Thank you. Mr. Holmes...
Councilmember Lockaby: I am not.
Mayor Curtis: Yes, you are. Mr. Holmes, could you...
Councilmember Lockaby: [talks over, not intelligible] ...we had to do...
Mayor Curtis: [Gavels 3 times] Order. Order. Order.
Councilmember Lockaby: You going to throw me out?
Mayor Curtis: [Gavels] Order.
Councilmember Lockaby You going to threaten to throw me out?
Mayor Curtis: Keep it up and you'll find out.
Councilmember Lockaby: I guess I will.
Mayor Curtis: Okay.

Councilmember Lockaby: I'm keeping it up.

Mayor Curtis: [Gavels] Mr. Holmes will you please answer her question? Thank you.

Councilmember Lockaby: I know if you want to answer her question, I haven't asked one.

Mayor Curtis: Can I get the police officer from the back to enter the front, please?

Officer: Need her out?

Mayor Curtis: I need her out.

Officer: Councilmember Lockaby, will you come with me, please?

Mayor Curtis: We'll take a five minute recess. [Gavels.]

Councilmember Lockaby leaves the council chamber at 7:30pm.

Brief recess until 7:33pm when meeting resumed.

- Motion by Councilmember Gooch to withdraw original motion, 2nd by Councilmember Cummings. Motion to withdraw passes by vote of Yes=6, No=0. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to enter into agreement with Seating Solutions and TRZ Management for Amphitheater Chairs. Motion passed with vote of Yes = 5, No = 1. Councilmember Gooch voting No.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to accept the Budget Workshop Dates presented by City Administrator, David Dyrhaug. Motion passed with vote of Yes = 6 No = 0.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to pass 1st Reading of Ordinance, 2016-01, Timing of Taking Office. Motion passed with vote of Yes = 6, No =0.
- Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to move the Council Rules of Procedure item back to the next workshop session for further discussion. Motion passed with vote of Yes = 6, No = 0.
- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to change the Qualifications for Serving on Boards and Commissions adding that you must be a registered voter. Motion by Councilmember Gooch to withdraw the motion, 2nd by Councilmember Hulehan. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to have (4) four Orientation/Training sessions this year for council inviting MASC and ACOG to conduct the training. Vote taken, Yes=2, No=4. Councilmembers Gooch, Hulehan, Cummings and Mayor Curtis voting No. Motion failed.

EXECUTIVE SESSION

- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to go into Executive Session for the receipt of legal advice on matters covered by the attorney-client privilege and pertaining to contractual arrangements. Motion carried with vote Yes = 6, No = 0.
- Motion by Councilmember Graham with a 2nd by Councilmembers Cummings and Hulehan to return from Executive Session – No action taken, no vote taken.

ADJOURNMENT

- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to adjourn. Motion carried with vote of Yes =6, No = 0.

EXHIBIT 2

CODE OF ORDINANCES
CITY OF
SIMPSONVILLE, SOUTH CAROLINA

Published by Order of the City Council

UPDATED November 24, 2015

ARTICLE II. COUNCIL[†]

DIVISION 1. GENERALLY

Sec. 2-31. Powers.

Except as otherwise provided, all powers of the city and the determination of all matters of policy shall be vested in the council, with each member, including the mayor, having one vote.

(Code 1995, § 2-36)

State law reference – Similar provisions, S.C. Code 1976, § 5-11-30.

Sec. 2-32. Mayor pro tempore.

(a) The council shall, at the first meeting of the newly constituted council, after any general election for municipal council, elect one of its members as mayor pro tempore for a term of two years.

(b) It shall be the duty of the mayor pro tempore to act as mayor during the absence or disability of the mayor, or in the case of a vacancy in the office of mayor. After an extended absence of six months, the mayor pro tempore's salary shall be adjusted to the current salary for the mayor for the remainder of the absence.

(Code 1995, § 2-37; Ord. No. 2015-03, 6-9-2015)

State law reference – Mayor pro tempore, S.C. Code 1976, § 5-7-190.

Sec. 2-33. Oath of mayor and council members.

The mayor and council members before entering upon the duties of their respective offices shall take the following oath:

“I do solemnly swear (or affirm) that I am duly qualified, according to the constitution of this state, to exercise the duties of the office to which I have been elected and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of the state and the United States.

“As mayor (or councilmember) of the City of Simpsonville, I will equally, fairly, and impartially, to the best of my ability, and skill, exercise the trust reposed in me, and will use my best endeavor to preserve the peace and carry into effect according to law the purpose for which I have been elected. So help me God.”

(Code 1995, § 2-38)

State Law Reference: Article VI, Section 5, SC Constitution; Section 5-15-150.

[†] **State law reference** – Council form of government, S.C. Code 1976, § 5-11-10 et seq.

Sec. 2-34. Duties of mayor and council.

(a) The council members shall strive to attend all regular and special meetings of the city council and shall hold themselves at all times in readiness to perform any duty entrusted to them by the city council. The council members shall perform the duties thus imposed upon them with dispatch and to the best of their abilities. If a council member is unable to attend a regular or special meeting of the city council, he or she shall notify the city administrator.

(b) A mayor shall be elected from the city at large in the manner provided by law. The mayor shall be recognized as the head of the city government for all ceremonial purposes and by the governor for purposes of military law. He or she shall preside over the meetings of the city council, but shall have no regular administrative duties. The mayor shall provide the city council with information, guidance and leadership in matters of policy determination.

(c) Council members may attend meetings of city boards and commissions but shall not participate in board or commission discussions except by specific direction of city council or when the meeting relates to their property.

(Ord. No. 2015-03, 6-9-2015)

Sec. 2-35. Qualifications of mayor and council members; proceedings to vacate offices.

(a) The mayor and council members shall be qualified electors of the city. Except where authorized by law, neither the mayor nor any member of council shall hold any other elected position in local, state or federal government or any other municipal office or municipal employment. The mayor or any councilmember shall forfeit his office if he:

- (1) Lacks at any time during his term of office any qualification for the office prescribed by city ordinance or the general law and constitution of the state;
- (2) Violates any express prohibition of S.C. Code 1976, §§ 5-1-10 through 5-17-30;
- (3) Is convicted of a crime of moral turpitude.

(b) The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of office as provided in S.C. Code 1976, § 5-7-210.

Sec. 2-36. Communication between the mayor and the city council.

The mayor shall relate to and communicate with the chair of council committees and with the city council as a whole any and all problems, situations and conditions which arise concerning any department or activity of the city. Except for the purpose of inquiry, the members of the city council shall communicate only with the mayor and city administrator in any and all matters concerning any department or activity of the city.

(Code 1995, § 2-40)

Sec. 2-37. Emergency powers of mayor.

(a) A state of emergency shall be deemed to exist whenever, during times of great public crisis, disaster, rioting, civil disturbance, catastrophe, or for any other reason, municipal public safety authorities are unable to maintain public order or afford adequate protection for lives, safety, health, welfare, or property.

(b) In the event of a state of emergency threatening or endangering the lives, safety, health and welfare of the people within the city or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of a state of emergency, and in order to more effectively protect the lives, safety and property of the city, to define and impose a curfew applicable to all persons within the jurisdiction of the city.

(c) The mayor is hereby authorized and empowered to limit the application of the curfew to any area specifically designated and described within the jurisdiction of the city and to specific hours of the day or night; and to exempt from the curfew police officers, firefighters, doctors, nurses, and others as may be essential to the preservation of public order and immediately necessary to serve the needs of the people within the city.

(Code 1995, § 2-41)

Sec. 2-38. Compensation of mayor and council members.

(a) The annual salary of the mayor, the mayor pro tem, and the council members shall be set from time to time in accordance with S.C. Code 1976, § 5-7-170.

(b) No ordinance increasing or decreasing the salary of council members and the mayor shall become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members, whether or not they were elected in that election.

(c) The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties.

(Code 1995, § 2-42; Ord. No. 2015-03, 06-09-2015)

Secs. 2-39 – 2-60. Reserved.

DIVISION 2. Meetings[‡]

Sec. 2-61. Date and time.

(a) The council, after public notice, shall meet regularly at least once in every month at such times and places as the council may prescribe by rule.

[‡] State law reference – Council meetings, S.C. Code 1976, § 5-7-250.

(b) Special meetings of council may be held on the call of the mayor or a majority of the members. Notice of a special meeting shall be given immediately to all available members and the news media by the city clerk.

(c) All regular and special meetings of the council shall be open to the public.

(Code 1995, § 2-66; Ord. No. 2015-03, 06-09-2015)

Sec. 2-62. Executive sessions.

(a) The council may hold executive sessions as permitted by the state freedom of information act and this Code at such times and in such places as may be deemed necessary and in the public interest by a favorable vote of the council.

(b) Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this section, formal action means a recorded vote committing the council to a specific course of action.

(Code 1995, § 2-67)

State law reference –Executive sessions of a public body, S.C. Code 1976, § 30-4-70.

Sec. 2-63. Quorum and rules of order.

A majority of the council members serving shall constitute a quorum for the conduct of business at any meeting. The mayor or mayor pro tempore shall preside, except that in the absence of both, the members present shall elect a presiding member. Except as otherwise required by state law or ordinance, all proceedings of council shall be governed by the latest edition of “Robert’s Rules of Order, Newly Revised,” and the city attorney shall act as parliamentarian.

(Code 1995, § 2-68)

State law reference – Rules and procedures for council meetings, S.C. Code 1976, § 5-7-250(b).

Sec. 2-64. Voting requirements.

(a) All actions of the council shall be by majority vote of the members present at a public meeting, unless a different majority is required by state law or by ordinance.

(b) Every member of council present shall vote on every question except when required to refrain from voting by state law, subject to exceptions as set out in S.C. Code 1976, § 5-7-130.

(c) The vote on every question shall be by voice vote or ballot, unless a roll call vote on a question shall be called for by any member of council. The vote of each member voting on the question shall be recorded in the minutes by the city clerk. Where the vote of an individual council member is not audible to the city clerk during a voice vote, and the member has made no indication that he or she is refraining from the vote, the minutes will reflect that the member voted in the affirmative.

(d) No member of council may leave the council chamber while in public session without permission of the presiding officer.

(Code 1995, § 2-69; Ord. No. 1999-01, § 1, 1-26-1999; Ord. No. 2015-03, 06-09-2015)

Sec. 2-65. Minutes.

The clerk shall keep the minutes of all public meetings of council which shall be a matter of permanent public record. At each council meeting the minutes of the previous meeting shall be presented for approval. Minutes shall not be considered the official record of a meeting until approved by council. Any member of the council desiring to express a position on a matter voted upon by council in the minutes may do so by presenting the position in writing to the council not later than the next meeting at which votes may be taken.

(Code 1995, § 2-69)

Sec. 2-66. Appearance of citizens.

(a) Any citizen of the municipality or others who have standing in the municipality, such as business owners, shall be entitled to an appearance before council at any regular meetings concerning any municipal matter, with the exception of personnel matters. At least 10 minutes prior to the commencement of a city council meeting, such persons wishing to appear before council must place his or her name, address, and topic to be addressed on the public comments sign-up list maintained by the city clerk.

(b) Comments to the council shall be limited to three minutes, unless the city council authorizes one extension of three minutes. All remarks made by the speaker shall be addressed to council as a whole and not to any individual member of council. No profanity or personal attacks will be allowed; the speaker will forfeit their remaining time as a result of either. No person shall be permitted to enter into any discussion without the permission of the presiding officer. The purpose of addressing council is to allow council members to hear the opinions of the citizens and is not intended to afford the opportunity to engage in a debate or dialogue. Therefore, no reply or rebuttal by council members is required.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-67. Rules of decorum.

While any meeting of city council is in session, the following rules of decorum shall be observed.

(a) Any person who speaks at a city council meeting shall conduct himself or herself in a manner appropriate to the decorum of the meeting and shall not use any profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct. Any person who makes such remarks or otherwise engages in disorderly conduct which disrupts or otherwise impedes the orderly conduct of a city council meeting shall, at the discretion of the presiding officer, be barred from further audience before city council during that meeting and may be removed from the building.

(b) Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the presiding officer, it shall be the duty of such law enforcement officer to remove from the city council meeting any person who is disturbing the proceedings of the city council.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-68. Agenda.

Matters to be considered by the council at a Tuesday council meeting shall be received in the city clerk's office by noon the preceding Wednesday before a scheduled Tuesday council meeting. The mayor shall set the order of business of items on the agenda. The city clerk will have the agenda ready for council, public and media review by 5:00 p.m. the preceding Friday before a Tuesday council meeting. Matters not on the agenda may be considered upon request of a member only by majority vote.

(Code 1995, § 2-72; Ord. No. 2015-03, 06-09-2015)

Sec. 2-69. City administrator to attend.

The city administrator shall attend all meetings of the council unless excused by the council. He shall keep the council advised of the status of matters pending for council consideration, make recommendations and present ordinances and resolutions for council action, participate in the discussion of any matter involving the welfare of the city, and present items on the council agenda.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-70. City attorney to attend.

The city attorney shall attend all meetings of the council unless excused by the council. He shall act as parliamentarian, propose ordinances and resolutions, review all ordinances, resolutions and documents presented to council and give opinions upon questions of procedure, form and law to any member of council and the city administrator.

(Code 1995, § 2-73; Ord. No. 2015-03, 06-09-2015)

Sec. 2-71. City Clerk to attend.

The city clerk shall be ex officio clerk of the city council. The clerk shall give notices of meetings, post the agenda, attend regular and special meetings, record the votes of the council, keep minutes of council meetings and perform other duties as may be assigned by the council or the city administrator.

(Code 1995, § 2-74)

Sec. 2-72. Committee of the Whole.**(a) Purpose and Meeting Time.**

- (1) The City Council shall meet as a Committee of the Whole on the fourth Tuesday of the month beginning at 6:30 PM except during the months of November and December when a meeting of the Committee of the Whole will normally not occur unless called by the Mayor or a majority of council. The Committee of the Whole shall receive information concerning issues that are anticipated to come before Council. The purpose of the meeting is to provide a forum for a thorough and detailed discussion and consideration of prospective or current council agenda items.
- (2) Meetings of the Committee of the Whole will be conducted in accordance with the Council's rules of procedure, including Robert's Rules of Order. However, the presiding officer may allow procedures that would have the purpose of receiving beneficial information and facilitating healthy discussion.

(b) Operation.

- (1) The Mayor shall chair the Committee of the Whole meeting.
- (2) Public notice shall be given for all meetings as prescribed by law and agendas will be posted on the City's website.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-23-00731

Sylvia Lockaby,

Plaintiff,

vs.

**City of Simpsonville, Janice Curtis, and
Adam Randolph,**

Defendants.

**AMENDED SUMMONS
(JURY TRIAL DEMANDED)**

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscriber, at his office, P. O. Box 50143, Columbia, South Carolina 29250, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint in the time aforesaid, a judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted,

/s/ Taylor Smith

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/s/ M. Brooks Derrick

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(864) 757-0757
brooks@derricklawoffice.com (email)
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
May 24, 2018

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-23-00731

Sylvia Lockaby,
Plaintiff,

vs.

**City of Simpsonville, Janice Curtis, and
Adam Randolph,**
Defendants.

**AMENDED COMPLAINT
(JURY TRIAL DEMANDED)**

The Plaintiff, complaining of the Defendants herein, alleges as follows:

1. The Plaintiff, Sylvia Lockaby (hereinafter “Plaintiff”), is a citizen and resident of the County of Greenville, State of South Carolina.
2. Defendant City of Simpsonville (hereinafter “Defendant Simpsonville”) is a municipal corporation that operates the City of Simpsonville, South Carolina, which is in Greenville County.
3. Defendant Janice Curtis (hereinafter “Mayor Curtis”) is a citizen and resident of the County of Greenville, State of South Carolina.
4. Defendant Adam Randolph (hereinafter “Defendant Randolph”) is a citizen and resident of the County of Greenville, State of South Carolina, and for all material purposes to this action, is an employee of Defendant Simpsonville, who works for the Simpsonville Police Department, a department of Defendant Simpsonville.
5. This court has subject matter jurisdiction of this action and personal jurisdiction over the parties hereto.
6. The acts and omissions of the Defendants subject of this action occurred in Greenville County.

7. This action is brought pursuant to the South Carolina Tort Claims Act, pursuant to 42 U.S.C. § 1983, *et seq.*, and pursuant to all other applicable law.

8. In February 2016, Mayor Curtis and Plaintiff served as elected officials on the Simpsonville City Council. Mayor Curtis served as the Defendant City of Simpsonville's mayor and Defendant Randolph served as a police officer for Defendant Simpsonville.

9. At all times material to this action, Defendant Simpsonville had not enacted any restrictions on the conduct or speech of City Council members at meetings that was content neutral, was narrowly tailored to serve a governmental interest, and left open ample alternative means of expression.

10. At all times material to this action, Defendant Simpsonville had not enacted any restrictions on the conduct or speech of City Council members at meetings at all.

11. At all times material to this action, Defendant Randolph was responsible for assisting Defendant Simpsonville and Mayor Curtis in keeping order and maintaining public safety at the monthly business meetings of the Simpsonville City Council.

12. On February 9, 2016, Defendant Simpsonville had its monthly public business meeting in the city council chambers at 118 N.E. Main Street in Simpsonville, South Carolina.

13. Plaintiff, Defendant Rudolph and Mayor Curtis were present for the February 9, 2016 meeting.

14. At all times during this meeting, Plaintiff conducted herself lawfully and peaceably.

15. At no time during this meeting was Plaintiff's behavior disruptive of the meeting.

16. At the meeting, Simpsonville City councilmembers, including Plaintiff and Mayor Curtis, had discussion of a motion by councilmember Matthew Gooch (seconded by councilmember Ken Cummings) to give permission for Simpsonville City Administrator David

Dyrhaug to complete an application with the Greenville Legislative Delegation Transportation Committee (GLDTC) for curb replacement at Aster Drive in Simpsonville.

17. During discussion of this motion, Plaintiff was recognized and had the floor.

18. Plaintiff began by asking a question of Administrator Dyrhaug about the specific application for curb replacement in Aster Drive as it related to the citywide plan of storm water displacement and infrastructure maintenance, but, before Plaintiff could ask a follow-up question of Dyrhaug, Mayor Curtis interrupted Plaintiff by accusing her of arguing the point, which according to Mayor Curtis, was outside the scope of discussion for the motion.

19. Plaintiff objected to the Mayor's characterization of her discussion with Administrator Dyrhaug and the Mayor's interpretation of the meaning of "discussion" by saying "I'm not arguing. I'm, I'm stating a fact that we have storm water issues all over the city. Is this opening a can of worms?"

20. Despite Mayor Curtis's attempts to interrupt Plaintiff's discussion with Administrator Dyrhaug, Plaintiff persisted in trying get an answer from Dyrhaug when Mayor Curtis declared Plaintiff was finished and began banging the gavel several times and yelling "Order!"

21. After Plaintiff questioned whether Mayor Curtis intended to eject Plaintiff from the meeting for pursuing the inquiry with Dyrhaug, Mayor Curtis indicated she was and told Officer Randolph to approach the front of council chambers.

22. After Defendant Randolph arrived near the front of the room, Mayor Curtis said to Defendant Randolph: "I need her out." At which point, Defendant Randolph said, "Councilmember Lockaby, will you come with me please?"

23. Plaintiff understood that she was being detained for disrupting the proceeding and that she was not free to remain in her councilmember seat.

24. Plaintiff obeyed Defendant Randolph's commands and made no attempt to flee the scene or in any fashion physically confront him.

25. Immediately thereafter, Plaintiff was seized and escorted away from the council chambers in the custody of Defendants Randolph and Simpsonville.

26. A copy of the minutes for the February 2016 business meeting, as approved by the city council for Defendant Simpsonville at the March 2016 meeting, are attached hereto as an exhibit to this complaint.

27. The City Council Chambers at 118 N.E. Main Street in Simpsonville, South Carolina is a traditional public forum.

28. The discussion of curb replacement and storm water issues is a matter for public concern for Simpsonville, South Carolina.

29. Plaintiff's conduct at the meeting in question was not disorderly and she did not breach any rules concerning the conduct of a councilmember when engaged in discussion in public session.

30. Plaintiff did not speak any "fighting words."

31. Defendant Randolph and Defendant Simpsonville did not have probable cause to believe Plaintiff was being disorderly or was in any way disrupting the proceeding.

32. Mayor Curtis' conduct in repeatedly interrupting Plaintiff while she had the floor, as well as Mayor Curtis' enforcement of her absurd interpretation of "discussion" to limit Plaintiff's ability to address a matter of public concern with Defendant Simpsonville's chief executive, effectively suppressed Plaintiff's ability to exercise oversight over Defendant Simpsonville and a matter of public concern that affects many city residents.

33. Mayor Curtis' conduct described in this complaint, including, but not necessarily limited to, her command to eject Plaintiff from the public meeting based upon the content of what

Plaintiff was saying about a matter of public concern, was grossly negligent and evidences a reckless disregard for the Plaintiff's rights and the freedom of speech and thought during the Simpsonville council meetings.

34. None of the Defendants had any probable cause to believe that Plaintiff was committing or had committed any crime.

35. None of the Defendants had any reasonable belief that they could lawfully remove the Plaintiff from the meeting.

36. The Defendants were grossly negligent and failed to exercise even slight care, including, but not necessarily limited to, in the following respects:

- a. In seizing Plaintiff without probable cause;
- b. In failing to exercise even slight care to avoid violating Plaintiff's right to be free from an unreasonable seizure and free from suppression of her freedom of speech;
- c. In causing Plaintiff to be unlawfully detained; and
- d. In failing to take that degree of skill and care which a reasonable and prudent person would have done under the same or similar circumstances.

37. The acts and omissions of the Defendants have caused Plaintiff to sustain damages and entitle Plaintiff to recover damages from the Defendants.

38. Plaintiff has suffered damages, including, but not limited to, humiliation, public ridicule, and loss of personal reputation as a consequence of this arrest, as well as the expense of hiring an attorney to vindicate her constitutional rights.

39. The conduct of the Defendants and their agents and servants toward Plaintiff was deliberate, wanton, grossly negligent and violated state and federal law.

FOR A FIRST CAUSE OF ACTION
(Civil/Constitutional Rights Violation – 42 U.S.C. § 1983)

40. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

41. Defendants falsely and wrongfully arrested Plaintiff while Plaintiff was exercising her clearly established, fundamental, constitutional rights of free speech and petition.

42. This false and wrongful arrest was in violation of Plaintiffs' First and Fourth Amendment rights as incorporated by the Fourteenth Amendment of the United States Constitution.

43. At the time Plaintiff was arrested, Plaintiff was exercising her rights guaranteed under the First Amendment to the United States Constitution and fulfilling her duty of oversight over matters of public concern for the benefit of residents of the City of Simpsonville.

44. Defendants Mayor Curtis and Randolph are named in this lawsuit and sued in their individual capacity for purposes of damages pursuant to 42 U.S.C. § 1983 and the underlying decisional law issued by the United States Supreme Court and its inferior courts.

45. Mayor Curtis was deliberately indifferent towards Plaintiff's First and Fourth Amendment Constitutional rights by ordering Defendant Randolph to arrest Plaintiff for asking questions of the City Administrator when Plaintiff had a constitutional right to do so in the Simpsonville council chambers, a traditional public forum, during an open public meeting.

46. Defendant Curtis was deliberately indifferent and demonstrated that indifference by giving obviously unconstitutional orders to Defendants Randolph and Simpsonville to arrest the Plaintiff in clear violation of Plaintiff's fundamental right of speech.

47. Defendant Randolph had a sworn duty to preserve, protect, and defend the Constitution of South Carolina and of the United States of America and was required by the laws of South Carolina and the United States of America to refuse to obey the unlawful order by Mayor Curtis to arrest Plaintiff who was engaged in lawful and peaceful speech in violation of Plaintiff's First

and Fourth Amendment Constitutional Rights as incorporated by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

48. Even if Defendant Randolph was just following the directives given to him by a superior, he still violated his sworn duty by arresting the Plaintiff.

49. Plaintiff seek damages and punitive damages in an amount to be determined by a jury when informed of the facts in this matter and properly charged with the law by this court. Plaintiffs also seek attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

FOR A SECOND CAUSE OF ACTION
(Gross Negligence)

50. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

51. Plaintiff was arrested without probable cause by the Defendants, who did not have an objective, good-faith belief that Plaintiff was guilty of any offense.

52. Defendant Simpsonville failed to properly train and supervise the agents and employees of the Simpsonville Police Department.

53. Defendant Simpsonville was grossly negligent in training and supervising its staff and officers, including, but not necessarily limited to, Defendant Randolph.

54. Defendant Simpsonville owed Plaintiff a duty to properly train and supervise its personnel and to refrain from arresting Plaintiff without probable cause.

55. Defendant Simpsonville and its agents and servants breached this duty and were deliberate and grossly negligent, including, but not necessarily limited to, in the following respects:

- a. In arresting Plaintiff without probable cause to believe she had committed a crime;
- b. In failing to perform an adequate investigation;

- c. In failing to exercise even slight care to avoid violating Plaintiff's right to be free from an unreasonable seizure; and
- d. In causing Plaintiff to be unlawfully detained against her will.

56. As a proximate result, Plaintiff sustained damages.

FOR A THIRD CAUSE OF ACTION
(False Imprisonment/Seizure)

57. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

58. The Defendants falsely arrested and falsely imprisoned Plaintiff.

59. The Defendants, without cause or legal justification, restrained and confined Plaintiff.

60. The restraint was intentional and unlawful and was against Plaintiff's will.

61. As a result, Plaintiff was confined in police custody.

62. Plaintiff suffered embarrassment, humiliation, emotional distress, and slander of her name and in that she was arrested and placed in confinement for no legal cause.

63. As a direct and proximate result, Plaintiff is entitled to recover actual damages, punitive damages, and the costs of this action.

WHEREFORE, the Plaintiff prays:

- a) For judgment against the Defendants awarding the Plaintiff actual compensatory damages;
- b) For judgment against the Defendants awarding the Plaintiff punitive damages;
- c) For judgment against the Defendants awarding the Plaintiff attorneys' fees;
- d) For judgment against the Defendants awarding the Plaintiff the costs of this action; and
- e) For such other and further relief as the Court may deem just and proper.

[signatures next page]

Respectfully submitted,

/s/ Taylor Smith

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
May 24, 2018

/s/ M. Brooks Derrick

M. Brooks Derrick (S.C. Bar No. 76330)
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brooks@derricklawoffice.com (email)
ATTORNEY FOR PLAINTIFF

**Minutes of the
Simpsonville City Council
Business Meeting
February 9, 2016
6:30 p.m.
City Council Chambers – 118 N.E. Main Street**

CALL TO ORDER – Mayor Curtis

COUNCIL PRESENT – Councilmember Gooch, Councilmember Graham, Councilmember Hulehan, Councilmember Braswell, Councilmember Cummings, Councilmember Lockaby, Mayor Curtis

PLEDGE OF ALLEGIANCE

PUBLIC HEARING – Greenville County Redevelopment Authority 2016 Program Year Annual Action Plan

APPROVAL OF MINUTES

- Motion by Councilmember Lockaby with a 2nd by Councilmember Gooch to approve minutes from January 12, 2016 and January 26, 2016. Motion carried unanimously.

SPECIAL RECOGNITION – Coach Greg Porter, 2015 SC Football Coach of the Year

CITIZEN COMMENTS - None

COUNCIL COMMENTS

- Hillcrest High School Scholastic Achievements – Councilmember Graham
- Hillcrest High School Athletic Achievements – Councilmember Graham
- Budget Comments – Councilmember Gooch
- Update on the Grandview and Davenport Intersection – Councilmember Gooch
- Motion by Councilmember Graham with a 2nd by Councilmember Lockaby to appeal Council Comments to allow further comments on non-voting items. Roll call vote taken, Yes=2, No=5. Councilmembers Gooch, Hulehan, Braswell, Cummings and Mayor Curtis voting No. Motion failed.

BUSINESS

a. *Matters Referred by the Planning Commission*

- Motion by Councilmember Graham with at 2nd by Councilmembers Cummings and Braswell pass 2nd Reading of AXZ-2016-02, Proposed Annexation at 700 Fairview Road. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmembers Gooch and Braswell to pass 1st Reading of TX-2016-01, Electronic Message Display Signs in the R-OI District. Motion carried unanimously.
- SP-2016-03, Harrison Bridge Center ID, Major Change, Withdrawn.

b. *Other Business*

- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings to pass Resolution 2016-01, GCRA Annual Action Plan. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to pass Resolution 2016-02, Safety Policy. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to appoint Stephanie Kelley to the Election Commission. Motion passed unanimously.
- Motion by Councilmember Lockaby with a 2nd by Councilmember Graham to accept the bid for Wetlands Remediation from Apex Companies. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to accept the Mutual Aid Agreements as written. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings giving City Administrator, David Dyrhaug permission for completing application with GLDTC for curb replacement at Aster Drive.
- On written request from Councilmember Lockaby:
 Councilmember Lockaby was recognized by Mayor Curtis and had the floor.
 Councilmember Lockaby: Are we opening a can of worms? Cause if we fix this...
 Mayor Curtis: Who are you talking to?
 Councilmember Lockaby: I'm looking at Mr. Dryhaug.
 Mayor Curtis: Well you didn't identify anyone...excuse me.
 Councilmember Lockaby: Mr. Dryhaug, I'm looking straight at you. Are we opening a can of worms when we do this? I'm just asking the question.
 Mr. Dyrhaug: I don't have an answer for that, but I...
 Councilmember Lockaby: Well.
 Mr. Dyrhaug: The issue is that so when this road was resurfaced that the reveal on the curb was diminished and that's caused an issue of storm water coming from the road onto private properties.
 Councilmember Lockaby: And we have storm water issues all over the city.
 Mayor Curtis: [Not intelligible]
 Councilmember Lockaby: I'm still speaking, please.
 Mayor Curtis: Yes, but you're arguing the point and this isn't a time for argument. You can ask questions, but this isn't argument.
 Councilmember Lockaby: I'm not arguing. I'm, I'm stating a fact that we have storm water issues all over the city. Is this opening a can of worms?
 Mayor Curtis: Well, ask our attorney.
 Councilmember Lockaby: I was asking Mr. Dryhaug, I haven't even gotten to the attorney yet.
 Mayor Curtis: Well, okay, that's fine. Mr. Holmes, could you...
 Councilmember Lockaby: I'm not finished.
 Mayor Curtis: You are now. [Gavels] Thank you. Mr. Holmes...
 Councilmember Lockaby: I am not.
 Mayor Curtis: Yes, you are. Mr. Holmes, could you...
 Councilmember Lockaby: [talks over, not intelligible] ...we had to do...
 Mayor Curtis: [Gavels 3 times] Order. Order. Order.
 Councilmember Lockaby: You going to throw me out?
 Mayor Curtis: [Gavels] Order.
 Councilmember Lockaby: You going to threaten to throw me out?
 Mayor Curtis: Keep it up and you'll find out.
 Councilmember Lockaby: I guess I will.
 Mayor Curtis: Okay.

Councilmember Lockaby: I'm keeping it up.

Mayor Curtis: [Gavels] Mr. Holmes will you please answer her question? Thank you.

Councilmember Lockaby: I know if you want to answer her question, I haven't asked one.

Mayor Curtis: Can I get the police officer from the back to enter the front, please?

Officer: Need her out?

Mayor Curtis: I need her out.

Officer: Councilmember Lockaby, will you come with me, please?

Mayor Curtis: We'll take a five minute recess. [Gavels.]

Councilmember Lockaby leaves the council chamber at 7:30pm.

Brief recess until 7:33pm when meeting resumed.

- Motion by Councilmember Gooch to withdraw original motion, 2nd by Councilmember Cummings. Motion to withdraw passes by vote of Yes=6, No=0. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to enter into agreement with Seating Solutions and TRZ Management for Amphitheater Chairs. Motion passed with vote of Yes = 5, No = 1. Councilmember Gooch voting No.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to accept the Budget Workshop Dates presented by City Administrator, David Dyrhaug. Motion passed with vote of Yes = 6 No = 0.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to pass 1st Reading of Ordinance, 2016-01, Timing of Taking Office. Motion passed with vote of Yes = 6, No =0.
- Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to move the Council Rules of Procedure item back to the next workshop session for further discussion. Motion passed with vote of Yes = 6, No = 0.
- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to change the Qualifications for Serving on Boards and Commissions adding that you must be a registered voter. Motion by Councilmember Gooch to withdraw the motion, 2nd by Councilmember Hulehan. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to have (4) four Orientation/Training sessions this year for council inviting MASC and ACOG to conduct the training. Vote taken, Yes=2, No=4. Councilmembers Gooch, Hulehan, Cummings and Mayor Curtis voting No. Motion failed.

EXECUTIVE SESSION

- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to go into Executive Session for the receipt of legal advice on matters covered by the attorney-client privilege and pertaining to contractual arrangements. Motion carried with vote Yes = 6, No = 0.
- Motion by Councilmember Graham with a 2nd by Councilmembers Cummings and Hulehan to return from Executive Session – No action taken, no vote taken.

ADJOURNMENT

- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to adjourn. Motion carried with vote of Yes =6, No = 0.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Sylvia Lockaby,

Plaintiff,

v.

City of Simpsonville, Janice Curtis, Adam
Randolph,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-23-00731

**DEFENDANTS' ANSWER
TO AMENDED COMPLAINT**

Defendants City of Simpsonville, Janice Curtis, and Adam Randolph (collectively, “Defendants”) answer the allegations of the Amended Complaint as follows:

FOR A FIRST DEFENSE
GENERAL DENIAL

Defendants deny each and every allegation of the Amended Complaint not herein admitted, qualified, or explained.

1. Upon information and belief, Defendants admit the allegations of Paragraph 1.
2. Defendants admit the allegations of Paragraph 2 to the extent it alleges that the City of Simpsonville is a South Carolina municipality. Defendants deny the remaining allegations of Paragraph 2.
3. Defendants admit the allegations of Paragraph 3.
4. Defendants admit that Defendant Adam Randolph is a citizen and resident of Greenville County. Defendants deny the remaining allegations of Paragraph 4 as stated and crave reference to the City of Simpsonville Code of Ordinances (“Code”) at Chapter 2, Articles I and II, applicable at the time of the meeting.

5. Paragraph 5 states or attempts to state legal conclusions, rather than facts. To the extent a response is required, the allegations are denied.
6. Defendants admit that the City Council (“Council”) for the City of Simpsonville meets in Greenville County. Defendants deny the remaining allegations of Paragraph 6.
7. Defendants deny the allegations of Paragraph 7 to the extent they suggest that Plaintiff has stated a claim under either the South Carolina Tort Claims Act or 42 U.S.C. § 1983.
8. Defendants admit the allegations of Paragraph 8.
9. Paragraphs 9-11 state or attempt to state legal conclusions, rather than facts. To the extent a response is required, the allegations are denied. With respect to the conduct of Council meetings and the roles of Defendants Curtis and Randolph at the February 9, 2016 Council meeting, the Defendants crave reference to the Code.
10. Defendants admit the allegations of Paragraphs 12-13.
11. Paragraphs 14-26 relate to a Council meeting on February 9, 2016. Defendants admit so much of those paragraphs as is reflected in the minutes of that meeting. Defendants deny any remaining allegations. To the extent these paragraphs state legal conclusions, rather than facts, no response is required.
12. Defendants admit that Council Chambers is located at 118 N.E. Main Street in Simpsonville. The remaining allegations of Paragraph 27 are denied because Plaintiff was subject to the Code at all times at issue in Amended Complaint.
13. Defendants admit the allegations of Paragraph 28.
14. Defendants deny the allegations of Paragraphs 29-39. With respect to the conduct of Council meetings, the Defendants crave reference to the Code. To the extent these paragraphs state legal conclusions, rather than facts, no response is required.

15. Paragraph 40 does not contain any allegations and therefore does not require a response. To the extent that a response is required, Defendants incorporate their foregoing responses as if restated verbatim.

16. Defendants deny the allegations of Paragraphs 41-49. With respect to the conduct of Council meetings, the Defendants crave reference to the Code. To the extent these paragraphs state legal conclusions, rather than facts, no response is required.

17. Paragraph 50 does not contain any allegations and therefore does not require a response. To the extent that a response is required, Defendants incorporate their foregoing responses as if restated verbatim.

18. Defendants deny the allegations of Paragraphs 51-56. With respect to the conduct of Council meetings, the Defendants crave reference to the Code. To the extent these paragraphs state legal conclusions, rather than facts, no response is required.

19. Paragraph 57 does not contain any allegations and therefore does not require a response. To the extent that a response is required, Defendants incorporate their foregoing responses as if restated verbatim.

20. Defendants deny the allegations of Paragraphs 58-63. With respect to the conduct of Council meetings, the Defendants crave reference to the Code. To the extent these paragraphs state legal conclusions, rather than facts, no response is required.

21. With respect to Plaintiff's prayer for relief, Defendants aver that Plaintiff is not entitled to any relief.

AS ADDITIONAL AND AFFIRMATIVE DEFENSES

22. Defendants incorporate their responses to the above numbered paragraphs as if fully set forth herein.

23. The allegations of the Amended Complaint fail to state a claim upon which relief can be granted against Defendants and should be dismissed pursuant to Rule 12(b)(6), SCRCF.
24. Plaintiff left the Council meeting without exhausting her remedies.
25. Plaintiff's claims are barred under the doctrines of laches, estoppel, consent, and/or unclean hands.
26. Plaintiff's claims are barred by the applicable statute of limitations.
27. All of the alleged actions on the part of the Defendants were either legislative or quasi-legislative acts and thus are subject to absolute legislative immunity and do not give rise to liability under any theory.
28. Defendants are immune from suit under any theory. In the alternative, conditional immunity applies to bar the Plaintiff's action.
29. Defendants deny that the matter asserted by Plaintiff in the Amended Complaint falls within the purview of 42 U.S.C. § 1983. These Defendants deny that any Constitutional right of Plaintiff has been violated.
30. Some or all of Plaintiff's claims and/or damages are barred and/or capped by the South Carolina Tort Claims Act, S.C. Code Ann. §§ 15-78-10 to -200.
31. Plaintiff may not assert any claim against the individual Defendants by operation of S.C. Code Ann. § 15-78-200.
32. Plaintiff's claims for actual damages are either governed or limited by the provisions of S.C. Code Ann. § 15-78-120(a).
33. To the extent her claims sound in tort law or the law of negligence, Plaintiff's claims are barred or must be reduced by the doctrine of comparative negligence.

34. To the extent her claims sound in tort law or the law of negligence, Plaintiff's claims are barred because her own actions make her solely responsible for any damages she allegedly suffered.

35. Plaintiff may not recover punitive damages in accordance with S.C. Code Ann § 15-78-120(b).

36. The Plaintiff's claim for punitive damages violates the South Carolina State Constitution and like portions of the United States Constitution and should be dismissed.

37. Plaintiff may not recover attorney's fees in this action.

38. Defendants' actions were privileged or conditionally privileged.

39. Defendants hereby give notice that they intend to rely upon any additional affirmative defenses that become available or apparent during the course of investigation and/or discovery, and hereby reserve the right to amend this Answer to assert any such defenses.

WHEREFORE having fully answered the Amended Complaint, Defendants pray that:

- (a) Plaintiff's case be dismissed on the merits; and
- (b) Defendants be awarded such other and further relief as this Court deems just and proper.

Respectfully submitted,

By: s/ Sarah P. Spruill
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Attorneys for Defendants

June 26, 2018

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Sylvia Lockaby,
Plaintiff,

C.A. No. 2018-CP-23-00731

v.

City of Simpsonville, Janice Curtis, and Adam
Randolph,
Defendants.

DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56, SCRCP, and for the reasons set forth below, Defendants move the Court for an order granting summary judgment as to all or part of this action. By way of general background, Plaintiff Sylvia Lockaby, a former Simpsonville City Council member, seeks to recover damages under the South Carolina Tort Claims Act¹ and/ or 42 U.S.C. § 1983 based on a ruling by the Mayor, Defendant Janice Curtis, as the presiding officer at a City Council meeting that Plaintiff should leave the meeting. Defendants contend that there is no genuine issue as to any material fact and that they are entitled to judgment as a matter of law.

The grounds for this motion are as follow:

1. City Council meetings are subject to the Code of Ordinances for the City of Simpsonville (“Code”). The Code provides in § 2-63 that City Council meetings are governed by “Robert’s Rules of Order, Newly Revised” (“Robert’s Rules”). Under § 24 of Robert’s Rules, any ruling by the chair may be appealed. Under that same rule, “[m]embers have no right to criticize a ruling of the chair unless they appeal from his decision.” Lockaby did not appeal the ruling at issue in this case, and therefore her claims are barred.
2. The actions in question here are limited to one City Council meeting, and specifically, one ruling by the Mayor as presiding officer and the actions of Adam Randolph who was serving as sergeant-at-arms acting at the instruction of the presiding

¹ Per prior order of the Court, there are no claims under the South Carolina Tort Claims Act against the individual defendants.

officer. As such, the actions at issue are subject to absolute legislative immunity and do not give rise to liability under 42 U.S.C. § 1983 or the South Carolina Tort Claims Act.

This motion is supported by the attached affidavit of Phyllis Long, the pleadings, exhibits, depositions, and discovery responses given in this matter. In addition, these Defendants reserve their right to submit additional materials and a memorandum further supporting the grounds for their motion.

Respectfully submitted,

By: s/ Sarah P. Spruill
Sarah P. Spruill, SC Bar #68337
Boyd B. Nicholson, Jr., SC Bar #65387

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February 18, 2019

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Sylvia Lockaby,

Plaintiff,

v.

City of Simpsonville, Janice Curtis, and
Adam Randolph,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-23-00731

PERSONALLY appeared before me Phyllis Long, who, being duly sworn, deposes and says:

1. I am over the age of 18, am competent to testify to these matters, and make this affidavit on personal knowledge.
2. My name is Phyllis Long, and I am the City Clerk for the City of Simpsonville. I have served in this role since 2013.
3. In connection with my job duties, I am familiar with the Code of Ordinances for the City of Simpsonville (“Code”).
4. Attached as Exhibit 1 to this affidavit is a true and correct copy of Article 2 of the Code that was in effect on February 9, 2016.
5. As shown in Exhibit 1, section 2-63 of the Code provided that City Council meetings “[e]xcept as otherwise required by state law or ordinance, all proceeding of council shall be governed by the latest edition of ‘Robert’s Rules of Order, Newly Revised[.]’”
6. As of February 9, 2016, the latest edition of “Robert’s Rules of Order, Newly Revised” was the 11th edition.

FURTHER AFFIANT SAYETH NAUGHT.

Phyllis Long
Phyllis Long

SWORN to before me this 15
day of February, 2019.

[Signature]
Notary Public of South Carolina
My Commission expires 4-15-25.

[SEAL]



EXHIBIT 1

CODE OF ORDINANCES
CITY OF
SIMPSONVILLE, SOUTH CAROLINA

Published by Order of the City Council

UPDATED November 24, 2015

ARTICLE II. COUNCIL[†]

DIVISION 1. GENERALLY

Sec. 2-31. Powers.

Except as otherwise provided, all powers of the city and the determination of all matters of policy shall be vested in the council, with each member, including the mayor, having one vote.

(Code 1995, § 2-36)

State law reference – Similar provisions, S.C. Code 1976, § 5-11-30.

Sec. 2-32. Mayor pro tempore.

(a) The council shall, at the first meeting of the newly constituted council, after any general election for municipal council, elect one of its members as mayor pro tempore for a term of two years.

(b) It shall be the duty of the mayor pro tempore to act as mayor during the absence or disability of the mayor, or in the case of a vacancy in the office of mayor. After an extended absence of six months, the mayor pro tempore's salary shall be adjusted to the current salary for the mayor for the remainder of the absence.

(Code 1995, § 2-37; Ord. No. 2015-03, 6-9-2015)

State law reference – Mayor pro tempore, S.C. Code 1976, § 5-7-190.

Sec. 2-33. Oath of mayor and council members.

The mayor and council members before entering upon the duties of their respective offices shall take the following oath:

“I do solemnly swear (or affirm) that I am duly qualified, according to the constitution of this state, to exercise the duties of the office to which I have been elected and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of the state and the United States.

“As mayor (or councilmember) of the City of Simpsonville, I will equally, fairly, and impartially, to the best of my ability, and skill, exercise the trust reposed in me, and will use my best endeavor to preserve the peace and carry into effect according to law the purpose for which I have been elected. So help me God.”

(Code 1995, § 2-38)

State Law Reference: Article VI, Section 5, SC Constitution; Section 5-15-150.

[†] **State law reference** – Council form of government, S.C. Code 1976, § 5-11-10 et seq.

Sec. 2-34. Duties of mayor and council.

(a) The council members shall strive to attend all regular and special meetings of the city council and shall hold themselves at all times in readiness to perform any duty entrusted to them by the city council. The council members shall perform the duties thus imposed upon them with dispatch and to the best of their abilities. If a council member is unable to attend a regular or special meeting of the city council, he or she shall notify the city administrator.

(b) A mayor shall be elected from the city at large in the manner provided by law. The mayor shall be recognized as the head of the city government for all ceremonial purposes and by the governor for purposes of military law. He or she shall preside over the meetings of the city council, but shall have no regular administrative duties. The mayor shall provide the city council with information, guidance and leadership in matters of policy determination.

(c) Council members may attend meetings of city boards and commissions but shall not participate in board or commission discussions except by specific direction of city council or when the meeting relates to their property.

(Ord. No. 2015-03, 6-9-2015)

Sec. 2-35. Qualifications of mayor and council members; proceedings to vacate offices.

(a) The mayor and council members shall be qualified electors of the city. Except where authorized by law, neither the mayor nor any member of council shall hold any other elected position in local, state or federal government or any other municipal office or municipal employment. The mayor or any councilmember shall forfeit his office if he:

- (1) Lacks at any time during his term of office any qualification for the office prescribed by city ordinance or the general law and constitution of the state;
- (2) Violates any express prohibition of S.C. Code 1976, §§ 5-1-10 through 5-17-30;
- (3) Is convicted of a crime of moral turpitude.

(b) The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of office as provided in S.C. Code 1976, § 5-7-210.

Sec. 2-36. Communication between the mayor and the city council.

The mayor shall relate to and communicate with the chair of council committees and with the city council as a whole any and all problems, situations and conditions which arise concerning any department or activity of the city. Except for the purpose of inquiry, the members of the city council shall communicate only with the mayor and city administrator in any and all matters concerning any department or activity of the city.

(Code 1995, § 2-40)

Sec. 2-37. Emergency powers of mayor.

(a) A state of emergency shall be deemed to exist whenever, during times of great public crisis, disaster, rioting, civil disturbance, catastrophe, or for any other reason, municipal public safety authorities are unable to maintain public order or afford adequate protection for lives, safety, health, welfare, or property.

(b) In the event of a state of emergency threatening or endangering the lives, safety, health and welfare of the people within the city or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of a state of emergency, and in order to more effectively protect the lives, safety and property of the city, to define and impose a curfew applicable to all persons within the jurisdiction of the city.

(c) The mayor is hereby authorized and empowered to limit the application of the curfew to any area specifically designated and described within the jurisdiction of the city and to specific hours of the day or night; and to exempt from the curfew police officers, firefighters, doctors, nurses, and others as may be essential to the preservation of public order and immediately necessary to serve the needs of the people within the city.

(Code 1995, § 2-41)

Sec. 2-38. Compensation of mayor and council members.

(a) The annual salary of the mayor, the mayor pro tem, and the council members shall be set from time to time in accordance with S.C. Code 1976, § 5-7-170.

(b) No ordinance increasing or decreasing the salary of council members and the mayor shall become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members, whether or not they were elected in that election.

(c) The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties.

(Code 1995, § 2-42; Ord. No. 2015-03, 06-09-2015)

Secs. 2-39 – 2-60. Reserved.

DIVISION 2. Meetings[‡]

Sec. 2-61. Date and time.

(a) The council, after public notice, shall meet regularly at least once in every month at such times and places as the council may prescribe by rule.

[‡] State law reference – Council meetings, S.C. Code 1976, § 5-7-250.

(b) Special meetings of council may be held on the call of the mayor or a majority of the members. Notice of a special meeting shall be given immediately to all available members and the news media by the city clerk.

(c) All regular and special meetings of the council shall be open to the public.

(Code 1995, § 2-66; Ord. No. 2015-03, 06-09-2015)

Sec. 2-62. Executive sessions.

(a) The council may hold executive sessions as permitted by the state freedom of information act and this Code at such times and in such places as may be deemed necessary and in the public interest by a favorable vote of the council.

(b) Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this section, formal action means a recorded vote committing the council to a specific course of action.

(Code 1995, § 2-67)

State law reference –Executive sessions of a public body, S.C. Code 1976, § 30-4-70.

Sec. 2-63. Quorum and rules of order.

A majority of the council members serving shall constitute a quorum for the conduct of business at any meeting. The mayor or mayor pro tempore shall preside, except that in the absence of both, the members present shall elect a presiding member. Except as otherwise required by state law or ordinance, all proceedings of council shall be governed by the latest edition of “Robert’s Rules of Order, Newly Revised,” and the city attorney shall act as parliamentarian.

(Code 1995, § 2-68)

State law reference – Rules and procedures for council meetings, S.C. Code 1976, § 5-7-250(b).

Sec. 2-64. Voting requirements.

(a) All actions of the council shall be by majority vote of the members present at a public meeting, unless a different majority is required by state law or by ordinance.

(b) Every member of council present shall vote on every question except when required to refrain from voting by state law, subject to exceptions as set out in S.C. Code 1976, § 5-7-130.

(c) The vote on every question shall be by voice vote or ballot, unless a roll call vote on a question shall be called for by any member of council. The vote of each member voting on the question shall be recorded in the minutes by the city clerk. Where the vote of an individual council member is not audible to the city clerk during a voice vote, and the member has made no indication that he or she is refraining from the vote, the minutes will reflect that the member voted in the affirmative.

(d) No member of council may leave the council chamber while in public session without permission of the presiding officer.

(Code 1995, § 2-69; Ord. No. 1999-01, § 1, 1-26-1999; Ord. No. 2015-03, 06-09-2015)

Sec. 2-65. Minutes.

The clerk shall keep the minutes of all public meetings of council which shall be a matter of permanent public record. At each council meeting the minutes of the previous meeting shall be presented for approval. Minutes shall not be considered the official record of a meeting until approved by council. Any member of the council desiring to express a position on a matter voted upon by council in the minutes may do so by presenting the position in writing to the council not later than the next meeting at which votes may be taken.

(Code 1995, § 2-69)

Sec. 2-66. Appearance of citizens.

(a) Any citizen of the municipality or others who have standing in the municipality, such as business owners, shall be entitled to an appearance before council at any regular meetings concerning any municipal matter, with the exception of personnel matters. At least 10 minutes prior to the commencement of a city council meeting, such persons wishing to appear before council must place his or her name, address, and topic to be addressed on the public comments sign-up list maintained by the city clerk.

(b) Comments to the council shall be limited to three minutes, unless the city council authorizes one extension of three minutes. All remarks made by the speaker shall be addressed to council as a whole and not to any individual member of council. No profanity or personal attacks will be allowed; the speaker will forfeit their remaining time as a result of either. No person shall be permitted to enter into any discussion without the permission of the presiding officer. The purpose of addressing council is to allow council members to hear the opinions of the citizens and is not intended to afford the opportunity to engage in a debate or dialogue. Therefore, no reply or rebuttal by council members is required.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-67. Rules of decorum.

While any meeting of city council is in session, the following rules of decorum shall be observed.

(a) Any person who speaks at a city council meeting shall conduct himself or herself in a manner appropriate to the decorum of the meeting and shall not use any profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct. Any person who makes such remarks or otherwise engages in disorderly conduct which disrupts or otherwise impedes the orderly conduct of a city council meeting shall, at the discretion of the presiding officer, be barred from further audience before city council during that meeting and may be removed from the building.

(b) Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the presiding officer, it shall be the duty of such law enforcement officer to remove from the city council meeting any person who is disturbing the proceedings of the city council.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-68. Agenda.

Matters to be considered by the council at a Tuesday council meeting shall be received in the city clerk's office by noon the preceding Wednesday before a scheduled Tuesday council meeting. The mayor shall set the order of business of items on the agenda. The city clerk will have the agenda ready for council, public and media review by 5:00 p.m. the preceding Friday before a Tuesday council meeting. Matters not on the agenda may be considered upon request of a member only by majority vote.

(Code 1995, § 2-72; Ord. No. 2015-03, 06-09-2015)

Sec. 2-69. City administrator to attend.

The city administrator shall attend all meetings of the council unless excused by the council. He shall keep the council advised of the status of matters pending for council consideration, make recommendations and present ordinances and resolutions for council action, participate in the discussion of any matter involving the welfare of the city, and present items on the council agenda.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-70. City attorney to attend.

The city attorney shall attend all meetings of the council unless excused by the council. He shall act as parliamentarian, propose ordinances and resolutions, review all ordinances, resolutions and documents presented to council and give opinions upon questions of procedure, form and law to any member of council and the city administrator.

(Code 1995, § 2-73; Ord. No. 2015-03, 06-09-2015)

Sec. 2-71. City Clerk to attend.

The city clerk shall be ex officio clerk of the city council. The clerk shall give notices of meetings, post the agenda, attend regular and special meetings, record the votes of the council, keep minutes of council meetings and perform other duties as may be assigned by the council or the city administrator.

(Code 1995, § 2-74)

Sec. 2-72. Committee of the Whole.**(a) Purpose and Meeting Time.**

- (1) The City Council shall meet as a Committee of the Whole on the fourth Tuesday of the month beginning at 6:30 PM except during the months of November and December when a meeting of the Committee of the Whole will normally not occur unless called by the Mayor or a majority of council. The Committee of the Whole shall receive information concerning issues that are anticipated to come before Council. The purpose of the meeting is to provide a forum for a thorough and detailed discussion and consideration of prospective or current council agenda items.
- (2) Meetings of the Committee of the Whole will be conducted in accordance with the Council's rules of procedure, including Robert's Rules of Order. However, the presiding officer may allow procedures that would have the purpose of receiving beneficial information and facilitating healthy discussion.

(b) Operation.

- (1) The Mayor shall chair the Committee of the Whole meeting.
- (2) Public notice shall be given for all meetings as prescribed by law and agendas will be posted on the City's website.

- (3) The City Administrator shall prepare the agenda. Any member of council may place an item on the Committee of the Whole agenda. Meeting packets will be prepared by staff and provided to all council members in advance of the meeting. Items to be placed on the agenda must be received by the City Administrator no later than 12:00 PM (noon) on the Wednesday immediately preceding the meeting.
- (4) Public input.
- a. Every Committee of the Whole meeting shall include a time to receive public input.
 - b. The procedure for public speakers identified in Sec. 2-66 shall be followed. However, as long as a speaker's comments, in the sole opinion of the Council, are relevant, informative and non-repetitive, the time limits may be extended. The presiding officer may request that a public speaker hold his comments and/or return to the podium for further comments or questions from council when the particular item being addressed is reached on the meeting agenda.
- (5) Department heads will attend Committee of the Whole meetings when required by the City Administrator.

(c) Minutes shall be taken of all Committee of the Whole meetings and an audio recording made. The draft minutes shall be delivered to all council members before the council meeting at which the committee's recommendations are discussed. The minutes of each committee meeting shall serve as the report to council, however, any committee member may write a separate report.

(Ord. No. 2014-01, 5-13-2014; Ord. No. 2015-13, 11-10-2015)

Sec. 2-73. Special committees.

The council may appoint a special committee to assist in or hold a public hearing for council at any time upon any matter pending before it. Minutes or reports of hearings held by special committees shall be filed with the clerk as public records. Each such committee shall be automatically dissolved after it has completed the task(s) assigned to it by city council or eighteen months after its appointment, whichever comes first, unless council acts to extend it for a specified period of time.

(Code 1995, § 2-75: Ord. No. 2014-01, 5-13-2014; Ord. No. 2015-03, 06-09-2015)

Sec. 2-74 – 2-90 Reserved

DIVISION 3. ORDINANCES[§]

Sec. 2-91. Required.

(a) Council shall act by ordinances in all matters required by law to be done by ordinance, including to:

- (1) Adopt or amend an administrative code or ordinance, or create, alter or abolish any municipal department, office or agency.
- (2) Provide for a fine or other penalty or establish a rule or regulation in which a fine or other penalty is imposed for violations.
- (3) Appropriate funds and adopt a budget.
- (4) Grant, renew or extend franchises, licenses or rights in public streets or public property, and close abandoned streets.
- (5) Authorize the borrowing of money or the issuance of bonds.
- (6) Levy taxes, assess property for improvements or establish charges for services.
- (7) Annex area to the city.
- (8) Convey or lease or authorize the conveyance or lease of any lands of the city.
- (9) Amend or repeal any ordinance described in subsections (a)(1) through (a)(8) of this section.

(b) In all other matters the council may act either by ordinance or resolution, written or oral, recorded in the minutes.

(Code 1995, § 2-101)

State law reference – Acts required to be done by ordinance, S.C. Code 1976, §5-7-260

[§] **State law reference** –Forms and procedures for introducing and passing ordinances, S.C. Code 1976, § 5-7-270.

Sec. 2-92. Codification of ordinances.

All ordinances relating to administration, health, safety, vehicles, streets (except franchises and encroachments), traffic, railroads, crimes and offenses, utilities, solicitations, pollution, municipal court, descriptions of areas annexed to the city, and any other ordinances or portions of ordinances so required by the council shall be codified and updated annually. Standard codes, technical regulations and zoning ordinances may be cited in the Code by reference, and copies thereof shall be made available by the clerk for distribution or for purchase at a reasonable price to be determined by the city administrator.

(Code 1995, § 2-102; Ord. No. 2015-03, 06-09-2015)

State law reference – Municipal authority to codify, S. C. Code 1976, § 5-7-290.

Sec. 2-93. Notice Required

Prior to the introduction of an ordinance granting a franchise license or right for the use of any street or public property, or for the permanent closing of any abandoned street, the applicant for the ordinance shall publish a notice in three issues of a newspaper having general circulation in the city stating the nature of the franchise license or right sought or a description of the street sought to be closed, and the date on which the application is to be presented to the council which shall be at least one week after the last notice. This requirement shall not apply to the temporary closing of a public street initiated by the council.

(Code 1995, § 2-103)

Sec. 2-94. Form of ordinances.

(a) Every proposed ordinance shall be introduced in writing and in the form required for final adoption which shall include:

- (1) A title briefly describing the content.
- (2) Findings, reasons or basis for the ordinance, if desired and appropriate.
- (3) An enacting clause.
- (4) Citation of any ordinance repealed.
- (5) The provisions of the ordinance including section numbers if the ordinance is to be codified or amends an existing codified ordinance.
- (6) The effective date of the ordinance.
- (7) The name of the person requesting introduction of the ordinance.

- (8) The approval of the city attorney as to form and the assignment of an ordinance number.
- (9) Space for the signatures of the mayor or presiding member of the council and the clerk attesting notice, if required, and adoption.

(b) Written resolutions shall be in a similar form as deemed appropriate by the city attorney.

(Code 1995, § 2-104)

Sec. 2-95. Introduction of ordinances.

An ordinance may be proposed by any member of the council. A proposed ordinance shall be referred to the city attorney for approval as to form. The city attorney shall render assistance in the preparation of notices and ordinances. After an ordinance is in proper form and required notices have been given, the city attorney shall send the ordinance to the clerk to be held for public inspection. An ordinance shall be deemed to be introduced when it appears on an agenda for a public meeting of council and its title is read.

(Code 1995, § 2-105)

Sec. 2-96. Introduction of resolutions.

A voice motion of a member of council shall be considered to be the introduction of an oral resolution which shall require no written record other than a notation of the clerk in the council minutes. A resolution proposed in writing shall be introduced in the same manner as an ordinance.

(Code 1995, § 2-106)

Sec. 2-97. Enactment of ordinances.

(a) An ordinance to levy a tax, adopt a budget, appropriate funds, grant a franchise, license or right to use or occupy a public street or public property for commercial purposes shall be complete in the form in which it is finally passed, and in that form remain on file with the clerk for public inspection at least one week before final adoption.

(b) No ordinance shall be adopted until it shall have been read two times and on two separate days with at least six days between each reading.

(c) Emergency ordinances may be adopted on one reading without notice or hearing by affirmative vote of two-thirds of the members present. An emergency ordinance may not levy taxes, relate to a franchise or a service rate and shall expire automatically on the 61st day following enactment.

(d) The introduction and reading of any ordinance shall be by the reading of the title only unless a full reading is requested by a member of council.

(e) After the introduction of an ordinance, any member of the council may request a public hearing which may be held at any time designated by the council prior to final adoption.

(f) Upon final adoption by a vote of the council, an ordinance shall be signed by the mayor or presiding member and attested by the clerk, who shall file the original in the council minutes.

(Code 1995, § 2-107)

Sec. 2-98. Adoption of resolutions.

Written or oral resolutions may be adopted on one reading unless a public hearing is set by a majority of the members of the council present.

(Code 1995, § 2-108)

Secs. 2-99 – 2-130. Reserved.

GREENVILLE COUNTY STATUS CONFERENCE TRIAL WEEK SELECTION FORM

The form must be emailed as an attachment to Lyndall Coker, Jury Trial
Coordinator at lcoker@greenvillecounty.org
Only one attorney per case should email the form.

STATE OF SOUTH CAROLINA))) COUNTY OF GREENVILLE))) <u>Sylvia Lockaby</u>) Plaintiff(s))) vs.) <u>City of Simpsonville, Janice Curtis, and Adam</u>) <u>Randolph</u>) Defendant(s))	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. <u>2018</u> -CP-23- <u>00731</u> STATUS CONFERENCE FORM
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TRIAL DATE SELECTED

1. Has case been mediated? Yes Mediator Robert M. Erwin, Jr. Date: January 9, 2019
 No* Reason Reason Mediation Not Completed

**Sanctions may be imposed for failure to mediate*

2. Court Term* Agreed Upon

**Trial Week
Agreed Upon
06/17/2019 (Due to
a counsel conflict
on 06/20, any trial
would need to be
early in the week)**

**Available court terms are listed at
<http://www.greenvillecounty.org/scjd/courtrosters/RosterSelectio>
Select Common Pleas in the COURT AGENCY dropdown box,
then click Jury Trial in the ROSTER TYPE dropdown box.*

3. Approximate Trial Length

**Trial Length
1-1 1/2 Days**

Submitting Attorney* Sarah P. Spruill Date: 02/11/2019

Phone Number 864.240.3220 Email sspruill@hsblawfirm.com

*By submitting this form you are confirming that you have consulted with all counsel and are in agreement that this case will initially appear on the above selected trial docket week.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF
COMMON PLEAS OF THE
THIRTEENTH JUDICIAL CIRCUIT

SYLVIA LOCKABY,
Plaintiff,

CIVIL ACTION NO.
2018-CP-23-00731

vs.

CITY OF SIMPSONVILLE,
JANICE CURTIS, ADAM
RANDOLPH,

Defendants.

VIDEOTAPED DEPOSITION OF PHYLLIS LONG

DATE TAKEN: November 8, 2018

TIME BEGAN: 10:14 a.m.

TIME ENDED: 10:46 a.m.

LOCATION: Haynsworth Sinkler Boyd, P.A.
One North Main
Second Floor
Greenville, South Carolina

REPORTED BY: Eileen Thompson, CCR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

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APPEARANCES :

HARRISON, RADEKER & SMITH, P.A.
BY: TAYLOR M. SMITH, IV, ESQUIRE
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HAYNSWORTH SINKLER BOYD, P.A.
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864-240-3323
sspruill@hsblawfirm.com
Representing the Defendants

Also Present: Don Cely, videographer

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I N D E X

PAGE

Stipulation

5

EXAMINATION

By Ms. Spruill

5

By Mr. Smith

21

Certificate of Reporter

29

E X H I B I T S

DEFENDANTS' EXHIBITS	DESCRIPTION	MARKED
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1 Code of Ordinances

7

2 Meeting minutes of February 9, 2016

12

3 Approved meeting minutes of
March 8, 2016

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4 Photograph

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(It is hereby stipulated and agreed by and between counsel for the respective parties that this deposition is being taken in accordance with the South Carolina Rules of Civil Procedure, and that the deponent waives reading and signing of this deposition transcript.)

- - -

THE VIDEOGRAPHER: Good morning. My name is Don Cely of EveryWord, Inc. Today's date is November 8th, 2018, and the time is approximately 10:14 on the camera. The deposition is being held at the office of Haynsworth Sinkler Boyd at One Main Street, Greenville, South Carolina.

The case is Sylvia Lockaby versus City of Simpsonville. And our deposition witness today is Phyllis Long. The court reporter is Eileen Thompson of EveryWord, and she will now swear in the witness.

- - -

PHYLLIS LONG, after having been first duly sworn, was examined and testified as follows

- - -

1 MS. SPRUILL: And as an initial matter for
2 the record, counsel has previously discussed a
3 stipulated procedure for objections with
4 respect to this de bene esse deposition. What
5 we have discussed is that counsel will state
6 the objection in a very brief statement of the
7 basis for that objection, the witness will
8 pause and then answer the question, subject to
9 that objection.

10 Counsel, do you agree that that is the
11 procedure?

12 MR. SMITH: I do.

13 - - -

14 EXAMINATION

15 - - -

16 BY MS. SPRUILL:

17 Q. Okay. Ms. Long, I'm Sarah Spruill. I'm
18 here representing the City of Simpsonville, the
19 Defendant in this matter, to take your deposition.
20 A few brief words of instruction for you. First of
21 all, the court reporter is here to transcribe what
22 we say today, and she requires that you give an
23 audible answer to every question so she can write
24 that down. If you would confirm by saying "yes,"
25 that you understand?

1 A. Yes, I understand.

2 Q. I will mention to you again that you have
3 been sworn in, so any testimony you give today will
4 be under oath. Do you understand?

5 A. Yes.

6 Q. If at any time you don't understand a
7 question that either I ask you or that Mr. Smith
8 asks you, or if you would like the question
9 repeated, rephrased, or clarified, will you please
10 let the person asking the question know that?

11 A. Yes.

12 Q. If you don't ask a question, I will
13 interpret that to mean that you understood the
14 question. Is that fair?

15 A. Yes.

16 Q. If at any time you need water, coffee, a
17 break, anything else, just let me know.

18 A. Okay.

19 Q. If you would, please state your name and
20 address for the record.

21 A. My home address or my work address?

22 Q. Both.

23 A. My name is Phyllis Long, and my work
24 address is 118 Northeast Main Street, Simpsonville,
25 South Carolina 29681, and that is for the City of

1 Simpsonville. My home address is 305 Exeter Close,
2 E-x-e-t-e-r C-l-o-s-e, Easley, South Carolina 29642.

3 Q. And can you provide me your -- the history
4 of your employment with the City?

5 A. I was hired in May of 2012, as a temp to
6 answer the phone in the front lobby of City Hall. I
7 worked immediately under Lavada Galloway, who was
8 the human resources director and city clerk at the
9 time. I was hired on full-time in July of 2012 and
10 was named her HR assistant.

11 Ms. Galloway left the City in March of
12 2013. I was then promoted to the HR director and
13 city clerk in taking her position.

14 Q. Can you describe for me the hats you wear
15 in your employment with the City?

16 A. I am the HR director, as I stated. Also,
17 I'm responsible for the payroll; I am the city clerk
18 to the council and the mayor; I am the risk manager;
19 I chair the safety committee. I think that's about
20 all.

21 Q. And you mentioned that you served as the
22 city clerk?

23 A. Yes, ma'am.

24 (Whereupon, the court reporter marked Long Exhibit
25 Number 1 for identification.)

1 EXAMINATION RESUMED BY MS. SPRUILL:

2 Q. I am going to hand you what's been marked
3 as Exhibit 1 --

4 A. Okay.

5 Q. -- and I will ask you if you are familiar
6 with that document.

7 A. I am. Yes, ma'am.

8 Q. Does -- you will see there that Exhibit 1
9 includes Article 2 of the City of Simpsonville Code
10 of Ordinances?

11 A. Correct.

12 Q. And you will see there a date on it
13 updated November 24th, 2015?

14 A. Yes, ma'am.

15 Q. Is this exhibit, the portions of the City
16 of Simpsonville Code of Ordinances, that would have
17 applied to a city council meeting in February of
18 2016?

19 MR. SMITH: Objection. Calls for a legal
20 conclusion.

21 THE WITNESS: Yes.

22 EXAMINATION RESUMED BY MS. SPRUILL:

23 Q. As the city clerk for the City of
24 Simpsonville, would this have been the code of
25 ordinances you believed were in place as of February

1 2016?

2 A. Yes.

3 Q. Within that code, do -- are there duties
4 of the clerk described in Section 2-65 and 2-71?

5 A. Yes.

6 Q. And is this the portion of the code that
7 governs council meetings?

8 A. Yes.

9 Q. Describe the role of the city clerk at
10 council meetings.

11 A. During the council meeting, I'm
12 responsible for recording the meeting, as well as
13 taking the minutes of the meeting. I also take the
14 roll at the beginning of the meeting, and also take
15 a roll call vote, if requested by the chair.

16 Q. And with respect to the minutes, are those
17 duties laid out in Section 2-65 of Exhibit 1?

18 A. Yes.

19 Q. Okay. And who presided over council
20 meetings?

21 A. The mayor presides over the council
22 meetings.

23 Q. Okay. And what was the -- what is the
24 normal process if a member of council wants to
25 discuss something with a member of City staff during

1 a meeting?

2 A. The mayor will recognize that person.

3 Q. The mayor will recognize the member of
4 city staff?

5 A. Yes.

6 Q. What if a council member, other than the
7 mayor, wants to discuss something with a member of
8 City staff?

9 A. A council member, is that what your
10 question was?

11 Q. Yes, ma'am.

12 A. The mayor would have to recognize the
13 council member to speak, and then she would have to
14 say that she can -- then the mayor would have to
15 recognize the staff member she has -- she wants to
16 speak to.

17 Q. Okay. You mentioned that part of your
18 role at city council member meetings was to make
19 recordings?

20 A. Yes.

21 Q. What was your practice as to -- what is
22 your practice as to when you start and stop
23 recording?

24 A. When the mayor drops the gavel and
25 announces the meeting has begun, that's when the

1 recording starts. When she announces the meeting
2 closed, that's when the recording stops, unless she
3 calls for a recess.

4 Q. Okay. And what is your procedure, if the
5 mayor calls for executive session or a recess, in
6 the middle of a meeting?

7 A. The recording is paused.

8 Q. And when do you resume recording?

9 A. When the meeting resumes.

10 Q. Okay. And does anybody tell you when to
11 start or stop the recording?

12 A. When the mayor calls for the meeting to be
13 in recess, I would stop the recording. She doesn't
14 actually say, "Stop the recording," however, I just
15 know to do that when the meeting is not in session.

16 Q. Okay. And has anybody ever told you to
17 erase something or not record something, in the
18 course of the council meeting?

19 A. No, ma'am.

20 Q. And what is your role, in creating the
21 minutes of council meetings?

22 A. Generally, my practice is I take
23 handwritten notes along the way, so that I know who
24 made the motion, who made the second, and what the
25 vote count was, so that I can announce whether the

1 motion passed or failed. And then the next morning,
2 I type the minutes, based on my handwritten notes,
3 and then I listen to the MP3 recording, to make sure
4 I got the accurate information.

5 Q. And do you keep those handwritten notes?

6 A. No.

7 Q. And if in the future someone is looking at
8 a set of minutes, is the indication of who made a
9 motion or who made a second your opinion, based on
10 your notes and the recording of what happened there
11 in the meeting?

12 A. It is what happened in the meeting.

13 Q. Okay. Were you in attendance at the
14 council meeting on February 9th, 2016?

15 A. Yes.

16 Q. Who presided over that meeting?

17 A. Mayor Curtis.

18 (Whereupon, the court reporter marked Long Exhibit
19 Number 2 for identification.)

20 EXAMINATION RESUMED BY MS. SPRUILL:

21 Q. Okay. I'm going to hand you what we
22 marked as Exhibit 2, and ask you if you created that
23 document.

24 A. Yes, ma'am, I did.

25 Q. Are those the minutes of the February 9th,

1 2016 council meeting?

2 A. Yes.

3 Q. Did you prepare these minutes consistent
4 with your general practice?

5 A. Yes.

6 Q. Under "other business" in those minutes,
7 there appears to be some transcription there. Can
8 you describe what that is and how it came to be
9 included in the minutes?

10 A. There is a motion on "other business,"
11 which was made by Council Member Gooch, seconded by
12 Council Member Cummings, to give our city
13 administrator permission to complete application for
14 curb replacement at Astor Drive. And there was
15 further verbatim explanation in this particular
16 motion that was done by Mr. Holmes' Law Firm, and he
17 asked me to include this in the minutes.

18 Q. Okay. And so there you're describing --
19 there's a bullet point that says, "On written
20 request from Council Member Lockaby," and then
21 there's some transcript. You're telling -- is your
22 -- I'm trying to figure out how to ask this without
23 leading.

24 Is that the testimony you were talking
25 about that Mr. Holmes' office provided and asked

1 that you include in the minutes?

2 A. Yes.

3 Q. And is it -- did you listen to the tape of
4 that meeting?

5 A. Yes.

6 Q. And is the transcript provided there
7 consistent with the tape, as you heard it?

8 A. Yes.

9 (Whereupon, the court reporter marked Long Exhibit
10 Number 3 for identification.)

11 EXAMINATION RESUMED BY MS. SPRUILL:

12 Q. I'm going to hand you what is marked as
13 Exhibit 3 and ask you if the minutes we just talked
14 about as Exhibit 2 were approved by council?

15 A. Yes, they were.

16 Q. You will see there that Council Member
17 Lockaby voted "no" on the motion to approve the
18 minutes of February 9th and February 23rd, 2016.
19 Did she express any reason why?

20 A. She did.

21 Q. She did? What was that reason?

22 A. She was not present for the entire meeting
23 on February 9th. Therefore, she could not approve
24 the minutes.

25 Q. Okay. Did she ask that anything not be --

1 did she ask that anything else be included in the
2 minutes of the February 9th meeting?

3 A. No.

4 Q. Did she take any exception to the minutes
5 of the February 9th meeting?

6 A. No.

7 Q. So on the subject of the February 9th
8 meeting, we've gone through the paperwork on it, and
9 now I want to talk to you about what you recall,
10 from that meeting.

11 (Whereupon, the court reporter marked Long Exhibit
12 Number 4 for identification.)

13 EXAMINATION RESUMED BY MS. SPRUILL:

14 Q. I'm going to hand you what is marked as
15 Exhibit 4 and ask you, are these photographs of the
16 City of Simpsonville council chambers?

17 A. Yes.

18 Q. And will you tell me -- and just tell us
19 if you're looking -- we'll call them the close-up
20 and the distant shot, or however you want to
21 describe them. Can you tell me, for context for
22 this discussion, where you sit in a council meeting?

23 A. Well, it's not visible in the close-up.
24 So if you look at the long shot, on the right-hand
25 side of this photo, just on the other side of the

1 knee wall, there are three chairs -- three black
2 leather chairs, and I sit in the first chair.

3 Q. Okay. And where did Council Member
4 Lockaby sit, when she was on council?

5 A. The council members are seated on the
6 dais, which is in the center of long shot, and
7 they're seated in order of ward. So Council Member
8 Lockaby would be in the last seat on the right
9 representing Ward Six.

10 Q. Okay. And where did the mayor sit?

11 A. The mayor sits in the middle, between the
12 three wards on the left and three wards on the
13 right.

14 Q. And for sake of reference, how far roughly
15 -- I know you don't have a tape measure in front of
16 you -- but how far is your chair from what was
17 Council Members Lockaby's chair, when she was on
18 council?

19 A. It is approximately 15 feet.

20 Q. Okay. And with respect to the transcript
21 portion of Exhibit 2, the minutes of that February
22 9th meeting, is that accurate, as to the portion of
23 the meeting that is transcribed there?

24 A. Yes.

25 Q. And when did you stop the recording?

1 A. When Mayor Curtis called recess for five
2 minutes.

3 Q. Okay. And did Council Member Lockaby
4 leave that meeting after you stopped the recording?

5 A. Yes.

6 Q. Before she left, did she challenge the
7 mayor's ruling?

8 A. No.

9 Q. Did she say anything else to council?

10 A. No.

11 Q. Did anybody on council say anything to
12 her?

13 A. No.

14 Q. Okay. Was -- to your recollection, was
15 Council Member Lockaby arrested?

16 A. Oh, no, she was not.

17 Q. Did Adam Randolph or anyone else touch
18 Council Member Lockaby?

19 A. No.

20 Q. Would you remember, if that had happened?

21 A. Yes, ma'am.

22 Q. Would that have been unusual?

23 A. Very unusual.

24 Q. And in the pictures, where did -- where
25 did officer -- well, where generally did the

1 sergeant-at-arms for council members -- for council
2 meetings stand in the room, during the meeting?

3 A. It's not visible in the close-up, but in
4 the long shot, it would be on the left side in the
5 very back of the council chamber. It's not visible
6 in the photo, but it's past all of the seating, all
7 the way to the back of the council chamber on the
8 left.

9 Q. And what did the -- what was the
10 sergeant-at-arms' role in council meeting normally?

11 A. As far as I know, their role is to scan
12 all of the participants of the council meeting and
13 all of the citizens that attend the council meeting
14 through their metal detector for safety purposes.
15 And then he is the sergeant-of-arms to the mayor and
16 the council.

17 Q. And does the sergeant-at-arms, can they --
18 can they leave the meeting?

19 A. No.

20 Q. And did you hear Council Member Lockaby
21 say anything, as she was leaving the room that
22 night?

23 A. She did say something. Best of my
24 knowledge, it was something like, "I'm leaving
25 anyway."

1 Q. Okay. And what was that in response to?

2 A. Because the mayor had asked the
3 sergeant-of-arms to come forward to the front of the
4 council chambers, and he was standing on the
5 left-hand side of the chamber, and she was on the
6 right, and --

7 Q. "She," Council Member Lockaby?

8 A. I'm sorry. Council Member Lockaby was on
9 the right, coming down from the dais where her seat
10 is. And she crossed in front of the dais toward the
11 sergeant-of-arms and said, "I'm leaving anyway."

12 Q. Okay. And how did you observe council
13 member Lockaby to leave the meeting?

14 A. How did I observe her? I'm not sure I
15 understood.

16 Q. Sure. Did she -- was she rushing out of
17 the room?

18 A. Oh, no, she gathered her things and walked
19 out, took her husband with her.

20 Q. Okay. And would you characterize her
21 actions, as she left, as voluntary or involuntary?

22 A. Voluntary.

23 Q. Okay. Is there anything else you recall
24 about Council Member Lockaby and how she came to
25 leave the meeting we've been discussing in your

1 deposition?

2 A. I'm not sure I understand the question.
3 However, if you're asking me why she left, the mayor
4 had asked for the sergeant-of-arms to come forward
5 and she was to leave the meeting. Is that what
6 you're asking me?

7 Q. I was just asking -- I'm almost finished
8 with my questions for you, and I wanted to make sure
9 that we had talked about everything you remembered
10 --

11 A. I got you.

12 Q. -- about that. And is there anything else
13 you want to say about that?

14 A. No, ma'am.

15 MS. SPRUILL: Okay. That is all the
16 questions I have for you. I may redirect.
17 Please answer Mr. Smith's questions.

18 THE WITNESS: Certainly.

19 MR. SMITH: Thank you for being here
20 today. I'm Taylor Smith, attorney for the
21 Plaintiff, Ms. Sylvia Lockaby. If you need a
22 recess, I think now would be a good time to ask
23 for one before I --

24 THE WITNESS: I'm good. Thank you though.

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EXAMINATION

- - -

BY MR. SMITH:

Q. Okay. I understand, from what you've testified to thus far, that after the February 9th meeting, the Holmes Law Firm became involved, is that correct?

A. I'm not sure I understand what you're asking me.

Q. Sure. Correct me if I'm wrong. The Holmes Law Firm contacted you or a member of council, regarding the minutes preparation for the next meeting, is that correct?

MS. SPRUILL: Mr. Smith, can we go off the record for a second?

MR. SMITH: Sure.

MS. SPRUILL: I think I can explain something to you that will help here.

THE VIDEOGRAPHER: And that's okay?

MR. SMITH: Yes, that's fine.

THE VIDEOGRAPHER: Stand by, please. And we're going off the record. The time is 10:36 a.m.

(Whereupon, a discussion was held off the record.)

THE VIDEOGRAPHER: And we're going back on

1 the record, after a brief pause. The time now
2 is 10:37 a.m. camera time. Counselor.

3 MR. SMITH: Thank you.

4 EXAMINATION RESUMED BY MR. SMITH:

5 Q. After the February 9th meeting, when did
6 you begin taking down the minutes preparation, as
7 you've described in your process?

8 A. I normally do it -- I normally begin doing
9 it the very next morning. I don't always complete
10 that task the next day. It really kind of depends
11 on my workload, but I certainly do it within the
12 week.

13 Q. How was that process changed, if at all,
14 after that February meeting that we're talking about
15 here today?

16 A. The process has not changed. I was
17 provided additional information by the City attorney
18 to add to the minutes, which was the verbatim
19 account of the motion for the curb to be installed
20 at Astor Drive.

21 Q. Without going into anything that the City
22 attorney advised you as a matter of law, can you
23 tell me what information that that attorney provided
24 you?

25 A. I'm not real sure I understand your

1 question. Is it not what I just answered?

2 Q. Again, I'm not trying to get into any
3 advice that the attorney may have provided you, as a
4 staff member to city council. I'm asking what facts
5 he may have provided to you, to help you in
6 preparing for the minutes of that time?

7 A. It was nothing different than what was on
8 the MP3 recording. Is that what you're asking me?
9 I mean, the information is on the MP3 recording,
10 which is on the website, and it's also in the
11 possession of myself for the permanent record. So
12 he just provided the transcript verbatim for that
13 one motion.

14 Q. Would you have -- without speaking with
15 the attorney, have included this transcript, as we
16 see in the approved minutes from that meeting?

17 A. I would have, if any council member had
18 asked me to put it in there.

19 Q. Did any council member, after the February
20 9th meeting, ask you to put that in there?

21 A. No.

22 Q. Did Mr. Holmes tell you to put that in the
23 meeting minutes?

24 A. He did.

25 Q. When were those meeting minutes, after Mr.

1 Holmes told you that, put into a form that you would
2 then propose to council later?

3 A. Like I said, I normally start preparing
4 the day after a council meeting. I actually have
5 two weeks to do that before the following council
6 meeting happens. I don't recall the exact date that
7 he gave it to me that I actually prepared it in the
8 minutes, but it was done prior to the next council
9 meeting.

10 Q. Do you recall, during that period of time,
11 if any member of council asked to review those
12 proposed minutes?

13 A. I don't remember if they did. I would
14 have provided it, if they were ready, for a council
15 member to review. However, the council members are
16 given the minutes at the council meetings for their
17 approval. There is not a permanent record, until
18 the council approves them.

19 Q. Did any member of council address the
20 language in what appears now as that transcription
21 to the February 9th meeting, before the next public
22 meeting?

23 A. I don't think so, but I don't recall.

24 Q. Did you receive any assistance, from any
25 individual, in identifying voices on that recording,

1 in preparation of that transcript that was approved?

2 A. No.

3 Q. Why were you told to include these minutes
4 -- these transcriptions, excuse me, in the minutes?

5 A. I was not told why.

6 Q. How, before the February 9th meeting,
7 would you have described the relationship between
8 Mayor Curtis and Council Member Lockaby?

9 A. I'm just there to record the minutes. I
10 don't get into personalities or politics.

11 Q. Do you take that recording device that you
12 use into executive session, when they go into
13 executive session during public meetings?

14 A. No.

15 Q. Do you keep that transcript device with
16 you, or does that stay in an office of the City?

17 A. You mean every day?

18 Q. Correct.

19 A. It's in my office.

20 Q. That would be the office at the City?

21 A. Correct.

22 Q. In your time as city clerk, have you
23 witnessed any council member be asked to leave a
24 meeting?

25 A. Yes.

1 Q. Can you tell me what instance that may
2 have been?

3 A. It was on February the 9th, 2016.

4 Q. And is that in reference to Mrs. Lockaby?

5 A. Yes.

6 Q. Have you seen any other instance, in your
7 time as city clerk, where someone was asked to leave
8 by a council member?

9 A. No.

10 Q. Have you noticed any instance where the
11 mayor has instructed any member of the public to
12 leave a meeting, during your time as city clerk?

13 A. I don't think so, no.

14 Q. On February 9th, after Mayor Curtis
15 instructs Officer Randolph to approach, did you
16 continue to take any notes at that point about what
17 was occurring?

18 A. No.

19 Q. Did you take any notes at all, at the
20 point at which between the recording stopped and the
21 recording began, during that recess period we're
22 talking about?

23 A. No.

24 Q. Having been present that day, on February
25 9th, and having reviewed the MP3 audio of the

1 meeting, are you in agreement that what has been
2 approved, pursuant to those meeting minutes for
3 February 9th, is a fair and accurate representation
4 of what was said between Council Member Lockaby and
5 Mayor Curtis?

6 A. Yes.

7 Q. Outside of your role as city clerk, have
8 you witnessed any interactions between Council
9 Member Lockaby and Mayor Curtis?

10 A. No.

11 Q. Are you aware of any individuals who may
12 be able to provide additional information regarding
13 the relationship between Council Member Lockaby and
14 Mayor Curtis?

15 A. I don't have any opinion on that.

16 MR. SMITH: I have no further questions.

17 MS. SPRUILL: No redirect from me. Thank
18 you, Mrs. Long.

19 THE WITNESS: We're done.

20 THE VIDEOGRAPHER: Very good. Thank you.
21 Stand by, please. We're going to go off the
22 record. The time is 10:46 a.m., and this
23 concludes the deposition at this time. Thank
24 you.

25 THE COURT REPORTER: What about signature?

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THE WITNESS: I will waive it.

THE COURT REPORTER: Did you want a copy?

MR. SMITH: Please.

- - -

(Witness excused.)

- - -

(Deposition was concluded at 10:46 a.m.)

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CERTIFICATE OF REPORTER

I, Eileen Thompson, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor council for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my official seal this 10th day of November, 2018 at Liberty, Pickens County, South Carolina.



Eileen Thompson,
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
October 17, 2024

CODE OF ORDINANCES

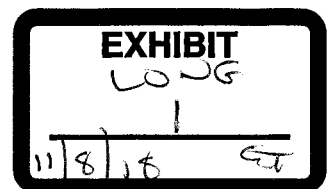
CITY OF

SIMPSONVILLE, SOUTH CAROLINA

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ARTICLE II. COUNCIL[†]

DIVISION 1. GENERALLY

Sec. 2-31. Powers.

Except as otherwise provided, all powers of the city and the determination of all matters of policy shall be vested in the council, with each member, including the mayor, having one vote.

(Code 1995, § 2-36)

State law reference – Similar provisions, S.C. Code 1976, § 5-11-30.

Sec. 2-32. Mayor pro tempore.

(a) The council shall, at the first meeting of the newly constituted council, after any general election for municipal council, elect one of its members as mayor pro tempore for a term of two years.

(b) It shall be the duty of the mayor pro tempore to act as mayor during the absence or disability of the mayor, or in the case of a vacancy in the office of mayor. After an extended absence of six months, the mayor pro tempore's salary shall be adjusted to the current salary for the mayor for the remainder of the absence.

(Code 1995, § 2-37; Ord. No. 2015-03, 6-9-2015)

State law reference – Mayor pro tempore, S.C. Code 1976, § 5-7-190.

Sec. 2-33. Oath of mayor and council members.

The mayor and council members before entering upon the duties of their respective offices shall take the following oath:

“I do solemnly swear (or affirm) that I am duly qualified, according to the constitution of this state, to exercise the duties of the office to which I have been elected and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of the state and the United States.

“As mayor (or councilmember) of the City of Simpsonville, I will equally, fairly, and impartially, to the best of my ability, and skill, exercise the trust reposed in me, and will use my best endeavor to preserve the peace and carry into effect according to law the purpose for which I have been elected. So help me God.”

(Code 1995, § 2-38)

State Law Reference: Article VI, Section 5, SC Constitution; Section 5-15-150.

[†] **State law reference** – Council form of government, S.C. Code 1976, § 5-11-10 et seq.

Sec. 2-34. Duties of mayor and council.

(a) The council members shall strive to attend all regular and special meetings of the city council and shall hold themselves at all times in readiness to perform any duty entrusted to them by the city council. The council members shall perform the duties thus imposed upon them with dispatch and to the best of their abilities. If a council member is unable to attend a regular or special meeting of the city council, he or she shall notify the city administrator.

(b) A mayor shall be elected from the city at large in the manner provided by law. The mayor shall be recognized as the head of the city government for all ceremonial purposes and by the governor for purposes of military law. He or she shall preside over the meetings of the city council, but shall have no regular administrative duties. The mayor shall provide the city council with information, guidance and leadership in matters of policy determination.

(c) Council members may attend meetings of city boards and commissions but shall not participate in board or commission discussions except by specific direction of city council or when the meeting relates to their property.

(Ord. No. 2015-03, 6-9-2015)

Sec. 2-35. Qualifications of mayor and council members; proceedings to vacate offices.

(a) The mayor and council members shall be qualified electors of the city. Except where authorized by law, neither the mayor nor any member of council shall hold any other elected position in local, state or federal government or any other municipal office or municipal employment. The mayor or any councilmember shall forfeit his office if he:

- (1) Lacks at any time during his term of office any qualification for the office prescribed by city ordinance or the general law and constitution of the state;
- (2) Violates any express prohibition of S.C. Code 1976, §§ 5-1-10 through 5-17-30;
- (3) Is convicted of a crime of moral turpitude.

(b) The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of office as provided in S.C. Code 1976, § 5-7-210.

Sec. 2-36. Communication between the mayor and the city council.

The mayor shall relate to and communicate with the chair of council committees and with the city council as a whole any and all problems, situations and conditions which arise concerning any department or activity of the city. Except for the purpose of inquiry, the members of the city council shall communicate only with the mayor and city administrator in any and all matters concerning any department or activity of the city.

(Code 1995, § 2-40)

Sec. 2-37. Emergency powers of mayor.

(a) A state of emergency shall be deemed to exist whenever, during times of great public crisis, disaster, rioting, civil disturbance, catastrophe, or for any other reason, municipal public safety authorities are unable to maintain public order or afford adequate protection for lives, safety, health, welfare, or property.

(b) In the event of a state of emergency threatening or endangering the lives, safety, health and welfare of the people within the city or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of a state of emergency, and in order to more effectively protect the lives, safety and property of the city, to define and impose a curfew applicable to all persons within the jurisdiction of the city.

(c) The mayor is hereby authorized and empowered to limit the application of the curfew to any area specifically designated and described within the jurisdiction of the city and to specific hours of the day or night; and to exempt from the curfew police officers, firefighters, doctors, nurses, and others as may be essential to the preservation of public order and immediately necessary to serve the needs of the people within the city.

(Code 1995, § 2-41)

Sec. 2-38. Compensation of mayor and council members.

(a) The annual salary of the mayor, the mayor pro tem, and the council members shall be set from time to time in accordance with S.C. Code 1976, § 5-7-170.

(b) No ordinance increasing or decreasing the salary of council members and the mayor shall become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members, whether or not they were elected in that election.

(c) The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties.

(Code 1995, § 2-42; Ord. No. 2015-03, 06-09-2015)

Secs. 2-39 – 2-60. Reserved.

DIVISION 2. Meetings[‡]

Sec. 2-61. Date and time.

(a) The council, after public notice, shall meet regularly at least once in every month at such times and places as the council may prescribe by rule.

[‡] State law reference – Council meetings, S.C. Code 1976, § 5-7-250.

(b) Special meetings of council may be held on the call of the mayor or a majority of the members. Notice of a special meeting shall be given immediately to all available members and the news media by the city clerk.

(c) All regular and special meetings of the council shall be open to the public.

(Code 1995, § 2-66; Ord. No. 2015-03, 06-09-2015)

Sec. 2-62. Executive sessions.

(a) The council may hold executive sessions as permitted by the state freedom of information act and this Code at such times and in such places as may be deemed necessary and in the public interest by a favorable vote of the council.

(b) Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this section, formal action means a recorded vote committing the council to a specific course of action.

(Code 1995, § 2-67)

State law reference –Executive sessions of a public body, S.C. Code 1976, § 30-4-70.

Sec. 2-63. Quorum and rules of order.

A majority of the council members serving shall constitute a quorum for the conduct of business at any meeting. The mayor or mayor pro tempore shall preside, except that in the absence of both, the members present shall elect a presiding member. Except as otherwise required by state law or ordinance, all proceedings of council shall be governed by the latest edition of “Robert’s Rules of Order, Newly Revised,” and the city attorney shall act as parliamentarian.

(Code 1995, § 2-68)

State law reference – Rules and procedures for council meetings, S.C. Code 1976, § 5-7-250(b).

Sec. 2-64. Voting requirements.

(a) All actions of the council shall be by majority vote of the members present at a public meeting, unless a different majority is required by state law or by ordinance.

(b) Every member of council present shall vote on every question except when required to refrain from voting by state law, subject to exceptions as set out in S.C. Code 1976, § 5-7-130.

(c) The vote on every question shall be by voice vote or ballot, unless a roll call vote on a question shall be called for by any member of council. The vote of each member voting on the question shall be recorded in the minutes by the city clerk. Where the vote of an individual council member is not audible to the city clerk during a voice vote, and the member has made no indication that he or she is refraining from the vote, the minutes will reflect that the member voted in the affirmative.

(d) No member of council may leave the council chamber while in public session without permission of the presiding officer.

(Code 1995, § 2-69; Ord. No. 1999-01, § 1, 1-26-1999; Ord. No. 2015-03, 06-09-2015)

Sec. 2-65. Minutes.

The clerk shall keep the minutes of all public meetings of council which shall be a matter of permanent public record. At each council meeting the minutes of the previous meeting shall be presented for approval. Minutes shall not be considered the official record of a meeting until approved by council. Any member of the council desiring to express a position on a matter voted upon by council in the minutes may do so by presenting the position in writing to the council not later than the next meeting at which votes may be taken.

(Code 1995, § 2-69)

Sec. 2-66. Appearance of citizens.

(a) Any citizen of the municipality or others who have standing in the municipality, such as business owners, shall be entitled to an appearance before council at any regular meetings concerning any municipal matter, with the exception of personnel matters. At least 10 minutes prior to the commencement of a city council meeting, such persons wishing to appear before council must place his or her name, address, and topic to be addressed on the public comments sign-up list maintained by the city clerk.

(b) Comments to the council shall be limited to three minutes, unless the city council authorizes one extension of three minutes. All remarks made by the speaker shall be addressed to council as a whole and not to any individual member of council. No profanity or personal attacks will be allowed; the speaker will forfeit their remaining time as a result of either. No person shall be permitted to enter into any discussion without the permission of the presiding officer. The purpose of addressing council is to allow council members to hear the opinions of the citizens and is not intended to afford the opportunity to engage in a debate or dialogue. Therefore, no reply or rebuttal by council members is required.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-67. Rules of decorum.

While any meeting of city council is in session, the following rules of decorum shall be observed.

(a) Any person who speaks at a city council meeting shall conduct himself or herself in a manner appropriate to the decorum of the meeting and shall not use any profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct. Any person who makes such remarks or otherwise engages in disorderly conduct which disrupts or otherwise impedes the orderly conduct of a city council meeting shall, at the discretion of the presiding officer, be barred from further audience before city council during that meeting and may be removed from the building.

(b) Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the presiding officer, it shall be the duty of such law enforcement officer to remove from the city council meeting any person who is disturbing the proceedings of the city council.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-68. Agenda.

Matters to be considered by the council at a Tuesday council meeting shall be received in the city clerk's office by noon the preceding Wednesday before a scheduled Tuesday council meeting. The mayor shall set the order of business of items on the agenda. The city clerk will have the agenda ready for council, public and media review by 5:00 p.m. the preceding Friday before a Tuesday council meeting. Matters not on the agenda may be considered upon request of a member only by majority vote.

(Code 1995, § 2-72; Ord. No. 2015-03, 06-09-2015)

Sec. 2-69. City administrator to attend.

The city administrator shall attend all meetings of the council unless excused by the council. He shall keep the council advised of the status of matters pending for council consideration, make recommendations and present ordinances and resolutions for council action, participate in the discussion of any matter involving the welfare of the city, and present items on the council agenda.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-70. City attorney to attend.

The city attorney shall attend all meetings of the council unless excused by the council. He shall act as parliamentarian, propose ordinances and resolutions, review all ordinances, resolutions and documents presented to council and give opinions upon questions of procedure, form and law to any member of council and the city administrator.

(Code 1995, § 2-73; Ord. No. 2015-03, 06-09-2015)

Sec. 2-71. City Clerk to attend.

The city clerk shall be ex officio clerk of the city council. The clerk shall give notices of meetings, post the agenda, attend regular and special meetings, record the votes of the council, keep minutes of council meetings and perform other duties as may be assigned by the council or the city administrator.

(Code 1995, § 2-74)

Sec. 2-72. Committee of the Whole.

(a) Purpose and Meeting Time.

- (1) The City Council shall meet as a Committee of the Whole on the fourth Tuesday of the month beginning at 6:30 PM except during the months of November and December when a meeting of the Committee of the Whole will normally not occur unless called by the Mayor or a majority of council. The Committee of the Whole shall receive information concerning issues that are anticipated to come before Council. The purpose of the meeting is to provide a forum for a thorough and detailed discussion and consideration of prospective or current council agenda items.
- (2) Meetings of the Committee of the Whole will be conducted in accordance with the Council's rules of procedure, including Robert's Rules of Order. However, the presiding officer may allow procedures that would have the purpose of receiving beneficial information and facilitating healthy discussion.

(b) Operation.

- (1) The Mayor shall chair the Committee of the Whole meeting.
- (2) Public notice shall be given for all meetings as prescribed by law and agendas will be posted on the City's website.

**Minutes of the
Simpsonville City Council
Business Meeting
February 9, 2016
6:30 p.m.
City Council Chambers – 118 N.E. Main Street**

CALL TO ORDER – Mayor Curtis

COUNCIL PRESENT – Councilmember Gooch, Councilmember Graham, Councilmember Hulehan, Councilmember Braswell, Councilmember Cummings, Councilmember Lockaby, Mayor Curtis

PLEDGE OF ALLEGIANCE

PUBLIC HEARING – Greenville County Redevelopment Authority 2016 Program Year Annual Action Plan

APPROVAL OF MINUTES

- Motion by Councilmember Lockaby with a 2nd by Councilmember Gooch to approve minutes from January 12, 2016 and January 26, 2016. Motion carried unanimously.

SPECIAL RECOGNITION – Coach Greg Porter, 2015 SC Football Coach of the Year

CITIZEN COMMENTS - None

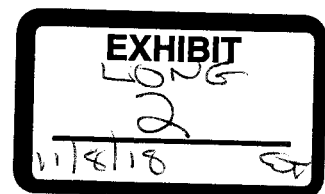
COUNCIL COMMENTS

- Hillcrest High School Scholastic Achievements – Councilmember Graham
- Hillcrest High School Athletic Achievements – Councilmember Graham
- Budget Comments – Councilmember Gooch
- Update on the Grandview and Davenport Intersection – Councilmember Gooch
- Motion by Councilmember Graham with a 2nd by Councilmember Lockaby to appeal Council Comments to allow further comments on non-voting items. Roll call vote taken, Yes=2, No=5. Councilmembers Gooch, Hulehan, Braswell, Cummings and Mayor Curtis voting No. Motion failed.

BUSINESS

a. *Matters Referred by the Planning Commission*

- Motion by Councilmember Graham with at 2nd by Councilmembers Cummings and Braswell pass 2nd Reading of AXZ-2016-02, Proposed Annexation at 700 Fairview Road. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmembers Gooch and Braswell to pass 1st Reading of TX-2016-01, Electronic Message Display Signs in the R-OI District. Motion carried unanimously.
- SP-2016-03, Harrison Bridge Center ID, Major Change, Withdrawn.



b. *Other Business*

- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings to pass Resolution 2016-01, GCRA Annual Action Plan. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to pass Resolution 2016-02, Safety Policy. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to appoint Stephanie Kelley to the Election Commission. Motion passed unanimously.
- Motion by Councilmember Lockaby with a 2nd by Councilmember Graham to accept the bid for Wetlands Remediation from Apex Companies. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to accept the Mutual Aid Agreements as written. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings giving City Administrator, David Dyrhaug permission for completing application with GLDTC for curb replacement at Aster Drive.
- On written request from Councilmember Lockaby:
Councilmember Lockaby was recognized by Mayor Curtis and had the floor.
Councilmember Lockaby: Are we opening a can of worms? Cause if we fix this...
Mayor Curtis: Who are you talking to?
Councilmember Lockaby: I'm looking at Mr. Dryhaug.
Mayor Curtis: Well you didn't identify anyone...excuse me.
Councilmember Lockaby: Mr. Dryhaug, I'm looking straight at you. Are we opening a can of worms when we do this? I'm just asking the question.
Mr. Dyrhaug: I don't have an answer for that, but I...
Councilmember Lockaby: Well.
Mr. Dyrhaug: The issue is that so when this road was resurfaced that the reveal on the curb was diminished and that's caused an issue of storm water coming from the road onto private properties.
Councilmember Lockaby: And we have storm water issues all over the city.
Mayor Curtis: [Not intelligible]
Councilmember Lockaby: I'm still speaking, please.
Mayor Curtis: Yes, but you're arguing the point and this isn't a time for argument. You can ask questions, but this isn't argument.
Councilmember Lockaby: I'm not arguing. I'm, I'm stating a fact that we have storm water issues all over the city. Is this opening a can of worms?
Mayor Curtis: Well, ask our attorney.
Councilmember Lockaby: I was asking Mr. Dryhaug, I haven't even gotten to the attorney yet.
Mayor Curtis: Well, okay, that's fine. Mr. Holmes, could you...
Councilmember Lockaby: I'm not finished.
Mayor Curtis: You are now. [Gavels] Thank you. Mr. Holmes...
Councilmember Lockaby: I am not.
Mayor Curtis: Yes, you are. Mr. Holmes, could you...
Councilmember Lockaby: [talks over, not intelligible] ...we had to do...
Mayor Curtis: [Gavels 3 times] Order. Order. Order.
Councilmember Lockaby: You going to throw me out?
Mayor Curtis: [Gavels] Order.
Councilmember Lockaby You going to threaten to throw me out?
Mayor Curtis: Keep it up and you'll find out.
Councilmember Lockaby: I guess I will.
Mayor Curtis: Okay.

Councilmember Lockaby: I'm keeping it up.

Mayor Curtis: [Gavels] Mr. Holmes will you please answer her question? Thank you.

Councilmember Lockaby: I know if you want to answer her question, I haven't asked one.

Mayor Curtis: Can I get the police officer from the back to enter the front, please?

Officer: Need her out?

Mayor Curtis: I need her out.

Officer: Councilmember Lockaby, will you come with me, please?

Mayor Curtis: We'll take a five minute recess. [Gavels.]

Councilmember Lockaby leaves the council chamber at 7:30pm.

Brief recess until 7:33pm when meeting resumed.

- Motion by Councilmember Gooch to withdraw original motion, 2nd by Councilmember Cummings. Motion to withdraw passes by vote of Yes=6, No=0. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to enter into agreement with Seating Solutions and TRZ Management for Amphitheater Chairs. Motion passed with vote of Yes = 5, No = 1. Councilmember Gooch voting No.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to accept the Budget Workshop Dates presented by City Administrator, David Dyrhaug. Motion passed with vote of Yes = 6 No = 0.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to pass 1st Reading of Ordinance, 2016-01, Timing of Taking Office. Motion passed with vote of Yes = 6, No = 0.
- Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to move the Council Rules of Procedure item back to the next workshop session for further discussion. Motion passed with vote of Yes = 6, No = 0.
- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to change the Qualifications for Serving on Boards and Commissions adding that you must be a registered voter. Motion by Councilmember Gooch to withdraw the motion, 2nd by Councilmember Hulehan. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to have (4) four Orientation/Training sessions this year for council inviting MASC and ACOG to conduct the training. Vote taken, Yes=2, No=4. Councilmembers Gooch, Hulehan, Cummings and Mayor Curtis voting No. Motion failed.

EXECUTIVE SESSION

- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to go into Executive Session for the receipt of legal advice on matters covered by the attorney-client privilege and pertaining to contractual arrangements. Motion carried with vote Yes = 6, No = 0.
- Motion by Councilmember Graham with a 2nd by Councilmembers Cummings and Hulehan to return from Executive Session – No action taken, no vote taken.

ADJOURNMENT

- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to adjourn. Motion carried with vote of Yes =6, No = 0.

Minutes of the
Simpsonville City Council
Business Meeting
March 8, 2016

6:30 p.m.

City Council Chambers – 118 N.E. Main Street

CALL TO ORDER – Mayor Curtis

COUNCIL PRESENT – Councilmember Gooch, Councilmember Graham, Councilmember Hulehan, Councilmember Braswell, Councilmember Cummings, Councilmember Lockaby, Mayor Curtis

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings to approve minutes from February 9, 2016 and February 23, 2016. Motion carried with vote of Yes = 6, No = 1. Councilmember Lockaby voting No.

SPECIAL RECOGNITION – Al Dreifort for his many years of service on the Board of Zoning Appeals

CITIZEN COMMENTS

- Derrick Quarles – P. O. Box 1054 – Signed up to speak on Accreditation and did not speak
- Patty Hendershot – 409 N. Main Street, #18, Coachwood Park – Bicycle Shop rezoning
- Joe Loe – 409 N. Main Street – Signed up to speak on Bicycle Shop rezoning but did not speak

COUNCIL COMMENTS - None

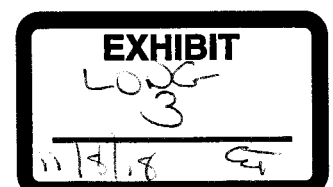
BUSINESS

a. *Matters Referred by the Planning Commission*

- Motion by Councilmember Graham with at 2nd by Councilmembers Braswell pass 2nd Reading of TX-2016-01, Electronic Message Display Signs in the R-OI District. Motion carried unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmembers Lockaby to accept the recommendation of the Planning Commission and deny 1st Reading of Z-2016-01, Rezoning of 421 N. Main Street (Bicycle Shop). Motion carried unanimously.
- Motion by Councilmember Cummings with a 2nd by Councilmember Gooch to pass SP-2016-04, Harrison Bridge Center ID, Major Change. Motion carried unanimously.

b. *Matters Referred by the Committee of the Whole*

- Motion by Councilmember Cummings with a 2nd by Councilmember Braswell not to move forward with the changes to how items are published on Social Media. Motion carried unanimously.
- Councilmember Lockaby deferred item on Procedures for Removing a Councilmember to upcoming discussion on Rules of Procedure.



- Motion by Councilmember Lockaby with a 2nd by Councilmember Graham to move forward with the Accreditation Payment. Roll call vote taken, Yes = 3, No = 4. Councilmember Gooch, Councilmember Hulehan, Councilmember Cummings and Mayor Curtis voting No. Motion failed.
- Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to amend the agenda for amending the budget for fiscal year 2015-2016 and to move the item to the next Committee Meeting. Roll call vote taken, Yes = 4, No = 3. Councilmember Graham, Councilmember Braswell and Councilmember Lockaby voting No. Motion failed to carry 2/3 vote.
- Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to withdraw the motion to amend agenda.

c. *Old Business*

- Motion by Councilmember Braswell with a 2nd by Councilmember Hulehan to pass 2nd Reading of Ordinance 2016-01, Timing of Taking Office. Motion carried unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Gooch to accept the Municipal Match, Resurfacing Program presented by David Dyrhaug, City Administrator. The costs to the City for fiscal year 2016-2017 is \$150,000.00 with a match of \$107,602.06. Motion carried with a vote of Yes = 6, No = 1. Councilmember Gooch voting No.

EXECUTIVE SESSION

- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to go into Executive Session to receive legal advice where the legal advice relates to a pending threatened, or potential claim and other matters covered by the attorney-client privilege. Motion carried unanimously.
- Back in session-- No action taken, no vote taken.

ADJOURNMENT

- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to adjourn. Motion carried unanimously.



EXHIBIT
LONG
4
11/8/18



ELECTRONICALLY FILED - 2019 Apr 23 3:12 PM - GREENVILLE - COMMON PLEAS CASE#2018CP2300731

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS

- - -

Sylvia Lockaby,

C.A. NO.:
2018-CP-23-00731

Plaintiff,

vs.

City of Simpsonville, Janice
Curtis, Adam Randolph,

Defendants.

DEPOSITION OF SYLVIA LOCKABY

DATE TAKEN: Thursday, February 7, 2019

TIME BEGAN: 2:06 p.m.

TIME ENDED: 3:00 p.m.

LOCATION: Haynsworth Sinkler Boyd, PA
One North Main Street, Second Floor
Greenville, South Carolina 29601

REPORTED BY: Lisa Garson, Court Reporter
EVERYWORD, INC.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

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APPEARANCES :

HARRISON, RADEKER & SMITH, PA
BY: ANDREW S. RADEKER, ESQUIRE
923 Calhoun Street
Columbia, South Carolina 29201
803.779.2211
drew@harrisonfirm.com
Representing the Plaintiff

HAYNSWORTH SINKLER & BOYD, PA
BY: SARAH P. SPRUILL, ESQUIRE
One North Main Street, Second Floor
Greenville, South Carolina 29601
864.240.3200
sspruill@hsblawfirm.com
Representing the Defendants

ALSO ATTENDING :

DAVID W. HOLMES

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I N D E X

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Stipulation	4
EXAMINATION	
By Ms. Spruill	4
By Mr. Radeker	35
Certificate of Reporter	37

E X H I B I T S

LOCKABY EXHIBITS	DESCRIPTION	PAGE
1	Code of Ordinances	11
2	February 9, 2016 Meeting Agenda	19
3	February 9, 2016 Meeting Minutes	20
4	March 8, 2016 Meeting Minutes	22
5	Amended Complaint	28

1 (It is hereby stipulated and agreed
2 by and among counsel for the respective
3 parties that this deposition is being
4 taken in accordance with the South
5 Carolina Rules of Civil Procedure, and
6 that the deponent waives reading and
7 signing of this deposition transcript.)

8 - - -

9 SYLVIA LOCKABY, after having been
10 first duly sworn was examined and
11 testified as follows:

12 - - -

13 EXAMINATION

14 - - -

15 BY MS. SPRUILL:

16 Q Ms. Lockaby, we've met before, I'm Sarah
17 Spruill. I'm here representing the City of
18 Simpsonville; Janice Curtis; and Adam Randolph, in
19 this matter.

20 Just a couple of ground rules before we
21 get started. We've got a court reporter here, who
22 is gonna take down everything we say; so if you
23 would give a verbal answer to any question, she
24 can't take down a head shake or a nod.

25 If, at any time, you don't understand a

1 question, or you would like it repeated, rephrased,
2 clarified -- any of that -- let me know. I know I
3 don't always ask clear questions, and I'm happy to
4 take another shot at it. I would just ask that you
5 ask me, and not your attorney, Mr. Radeker, if
6 there's confusion about a question.

7 If, at any time, you need water, coffee,
8 a break to step out and blow your nose, cough, any
9 of that --

10 A Oh, I'll blow my nose in here.

11 Q -- you let us know, and we're happy to
12 stop any time; and that's all I've got by way of
13 background.

14 Have you given a deposition before?

15 A No. I don't think.

16 Q Have you testified in court before?

17 A I don't think so. My memory is not as
18 good, right now, since my husband passed away.

19 Q But you are planning to testify to the
20 best of your memory here today?

21 A Yes.

22 Q Have you filed a lawsuit before?

23 A I don't think so.

24 Q Can you give us, for the record, your
25 name and address?

1 A Sylvia Lockaby; 30 Tamwood Circle,
2 Simpsonville.

3 Q And how long have you been at that
4 address?

5 A For almost 46 years.

6 Q And can you give me the names -- the
7 family names of any relatives you might have in
8 Greenville County?

9 A My son is Seth Ward; my daughter
10 Stephanie Raines.

11 Q Will you spell Raines for us?

12 A R-A-I-N-E-S. My granddaughter, Asheley
13 Blackwell, A-S-H-E-L-E-Y; my grandson, Cory Koontz,
14 K-O-O-N-T-Z; my stepson, Sam Lockaby.

15 I don't guess you need the great
16 grandchildren.

17 Q No. I'm just asking --

18 A These are adults.

19 Q I'm just asking to get a feel for any
20 family members you might have because I don't want
21 to put them on my jury.

22 A Oh, yeah, go ahead and put them on there.

23 Q Can you tell me what your employment
24 history is, since high school?

25 A Oh, Lord.

1 Q Best you know.

2 A Well, I worked for the postal services
3 for 33 years, so that's the bulk of it.

4 Q And what did you do there?

5 A I was a clerk.

6 Q Were you in the same office?

7 A In Greenville. Different offices, but in
8 Greenville.

9 Q Which offices did you work at?

10 A Orchard Park, which is now Keith Oglesby;
11 the main Post Office on Washington; and then they
12 moved the processing center down to Fairforest Way,
13 and I moved there.

14 Q Okay. What's your educational
15 background?

16 A High school.

17 Q Where did you go to high school?

18 A Greenwood.

19 Q Any college?

20 A No, ma'am. To my regret.

21 Q Are you still working for the postal
22 service?

23 A I'm retired.

24 Q When did you retire?

25 A December of '16.

1 Q I know you said you'd been at the Post
2 Office more than 30 years. Did you work anywhere
3 else for more than a year?

4 A I worked for Dan River in Fountain Inn.
5 I was the secretary to the plant manager; and then
6 I transferred to Simpsonville Mills, and I was over
7 the parts department. I worked for Blue Cross Blue
8 Shield. I don't remember anything. I'm sure
9 there's some more stuff.

10 Q Okay. Anywhere else you would have
11 worked more than a year or two?

12 A I don't remember.

13 Q Can you tell me about any civic or church
14 organizations you're involved with?

15 A I am with the care team at church. I do
16 meals for people that are -- have a sickness in the
17 family, or birth; I usher at church; I work in the
18 children's church -- mostly just church.

19 Q And which church is that?

20 A Bridgeway.

21 Q Where is that?

22 A Garlington Road. It was Mount Zion.

23 Q And how long have you worshiped there?

24 A Twenty-nine years.

25 Q And tell me about -- when did you get in

1 interested in local politics?

2 A Right before I was elected the first
3 time, whenever that was, we had a meeting of SOS,
4 Save Our Simpsonville; and they needed somebody to
5 run, so I raised my hand.

6 Q And, ballpark, when was that?

7 A Eight years ago; 2010. I probably took
8 office in '10.

9 Q How long were you on Simpsonville City
10 Council?

11 A Eight years.

12 Q And when was the end of your last term?

13 A This time last year, January of '18.

14 Q And how were the offices on Simpsonville
15 City Council split up?

16 A Into wards.

17 Q And are those single member districts, or
18 are they elected at-large?

19 A At-large.

20 Q And do you run under your own name, or do
21 you run affiliated with a political party?

22 A You don't have to declare a party at that
23 level.

24 Q And what was your ward?

25 A Six.

1 Q And have you ever run for any other
2 offices, other than Simpsonville City Council?

3 A I ran for county council last year.

4 Q And have you served on any government
5 boards, or anything?

6 A No.

7 Q Now we're gonna move from that sort of
8 general background into some things that are a
9 little more specific about how council worked.

10 Is that okay with you?

11 A Yes, ma'am.

12 Q Tell me how a county council meeting
13 usually worked.

14 A City council?

15 Q Yes. Sorry.

16 A I didn't make it to county council.

17 We have dates set for every meeting, two
18 times a month, except November, December. The
19 meeting starts at 6:30; we're expected to be in our
20 seat unless we're excused.

21 Q And were there rules that govern council
22 meetings?

23 A There are now.

24 BY MS. SPRUILL: I'm gonna show you what
25 we'll mark as Exhibit 1.

1 (Lockaby Exhibit 1, Code of Ordinances,
2 City of Simpsonville, South Carolina, marked
3 for identification.)

4 BY MS. SPRUILL:

5 Q I will tell you upfront that this is an
6 excerpt from the City of Simpsonville Code of
7 Ordinances; and you'll see there, if you flip to
8 the second page, there's an Article II, which is
9 titled, "Council;" and my question to you is, are
10 these the portions of the city code of ordinances
11 that applied to city council meetings, at the time,
12 in February 2016?

13 A To the best of my knowledge, yes.

14 Q And you said there are rules now.

15 A I haven't read these. The only thing I'm
16 going by is the November '15 date; so I don't know
17 if this is the actual rules, but that's the best of
18 my knowledge.

19 Q And you're welcome to take a look at
20 them, and then I'll ask you questions about some
21 specific provisions, as we go along.

22 You said, There are now. What did you
23 mean by that?

24 A After the incident that we're here about,
25 the council rules were put into place.

1 Q And by that do you mean that the code of
2 ordinances was amended?

3 A I don't know. Was it amended or just
4 added to?

5 MR. RADEKER: Can we go off the record?

6 - - -

7 (Off the record.)

8 - - -

9 WITNESS: I don't know, never mind. I
10 don't know if it was amended, or added to; I
11 don't know.

12 BY MS. SPRUILL:

13 Q Okay. But your response is indicating
14 that some changes were made to the procedures that
15 applied to council meetings after February of 2016.

16 A Yes, ma'am.

17 Q And if you would look, for me, at Section
18 2-63 in that exhibit, on the fifth page.

19 You'll see there that it says, "Except as
20 otherwise required by state law or ordinance, all
21 proceedings of council shall be governed by the
22 latest edition of "Robert's Rules of Order, Newly
23 Revised," and the city attorney shall act as
24 parliamentarian."

25 A Yes, ma'am.

1 Q Is that consistent with your recollection
2 of the rules that you followed in council?

3 A Yes.

4 Q And would you agree with me that what
5 Robert's Rules said goes, as far as how a meeting
6 is conducted at Simpsonville City Council, at that
7 time -- or should have?

8 A It should have, yes.

9 Q And who presided at Simpsonville City
10 Council meetings?

11 A The mayor.

12 Q And --

13 A Or mayor pro tem, whoever.

14 Q And would that be in that same exhibit as
15 is set forth right there in section 2-34, which is
16 on the third page of that exhibit?

17 A It's actually set in 63.

18 Q That was gonna be my next question.

19 A Yeah. I don't see it in 34.

20 Q I can help you. It's in the middle of
21 paragraph B there. "He or she shall preside over
22 the meetings of the city council."

23 A Okay.

24 Q And that's consistent with your
25 recollection?

1 A Yes. But they should add mayor pro tem.

2 Q Okay. And I think that's in that section
3 2-63.

4 A Yes.

5 Q And what were the responsibilities of the
6 sergeant-at-arms at a Simpsonville City Council
7 meeting?

8 A If we had a sergeant-at-arms, they were
9 to scan people at the door -- they went through a
10 metal detector -- and if there was any issue, they
11 would do the wand.

12 Q And will you look for me at section 2-67
13 in that same exhibit; and specifically, it's
14 paragraph B of section 2-67.

15 A Okay.

16 Q Is that description there of what a
17 sergeant-at-arms does consistent with your
18 recollection?

19 A To the best of my knowledge.

20 Q And as is set forth there, does the
21 sergeant-at-arms act at the direction of the
22 presiding officer of the meeting?

23 A That's what it says.

24 Q And what role does the agenda play -- or
25 did, at this time, the agenda play -- at a

1 Simpsonville City Council meeting?

2 A We followed the agenda. We didn't waiver
3 from the agenda unless we wanted to move things
4 around, and then we voted on it.

5 Q And does the agenda -- as a matter of
6 South Carolina state law, does the agenda govern
7 what you can discuss during a city council meeting?

8 A Yes. Unless we had council comments,
9 which, they did away with those. Council comments,
10 you can talk about anything you wanted to.

11 Q But council couldn't take official action
12 based on those?

13 A Oh, no, no, no.

14 Q Do you know of any mechanism where
15 council can take up matters not on the agenda?

16 A I don't recollect any. It has to be on
17 the agenda, so the public will know.

18 Q That's right. And so the public will
19 know, that's the requirements of the Freedom of
20 Information Act?

21 A Yes.

22 Q Could you have an effective city council
23 meeting without some kind of rules?

24 A I would say not.

25 Q And what role did city staff play at city

1 council meetings?

2 A We had the parliamentarian there, which
3 was Mr. Holmes; the city administrator, at the
4 time, was acting city administrator, David Dyrhaug.
5 They were there, and Phyllis Long was the city
6 clerk. She didn't really get involved, much, but
7 the other two -- Mr. Holmes and Mr. Dyrhaug -- were
8 there to answer questions.

9 Q Okay.

10 A Or clarify.

11 Q Okay. And would that be governed by the
12 code of ordinances that we've been looking at in
13 Robert's rules?

14 A I haven't read the code of ordinances, so
15 I can't answer that question.

16 Q What would a council member need to do if
17 he or she wanted to address a question to city
18 staff?

19 A You raise your hand, and the mayor will
20 recognize you in turn -- mayor or mayor pro tem
21 will recognize you in turn -- and then you ask your
22 question -- not of her, or him, but of the
23 individual.

24 It could be a department head, not
25 necessarily Mr. Holmes or Mr. Dyrhaug.

1 Q Okay. But those requests for information
2 would have to go through the presiding officer?

3 A You have to be recognized.

4 Q And could you debate city staff?

5 A I don't know; I don't know; I don't know.
6 I don't understand the question -- debating city
7 staff? I don't know why I'd debate them.

8 Q Okay. Fair enough. In your memory,
9 could a council member challenge, or appeal, a
10 ruling from the chair?

11 A Yes, ma'am.

12 Q How does that work?

13 A One of the council members would say, I
14 appeal the ruling from the chair, and they would
15 have a vote.

16 Q And what happened if the vote carried?

17 A Whatever she said, went.

18 Q Did you ever see that happen?

19 A After the incident of February 9th, yes,
20 I did.

21 Q Did you ever do that?

22 A I don't recall.

23 Q And with respect to your answer on the
24 question about if you'd ever seen it done, and you
25 said, after the incident we're here talking about;

1 if the minutes showed it had happened prior to that
2 time, would you have any reason to dispute that?

3 A No.

4 Q And is that procedure for an appeal --
5 does that come out of Robert's rules?

6 A I don't know.

7 Q But like we talked about earlier -- the
8 procedures -- if they're not out of the code of
9 ordinances, themselves, they are out of Robert's
10 rules?

11 A They should be, yes.

12 Q Would you agree that the approved minutes
13 are the official record of any council proceeding?

14 A No.

15 Q You wouldn't agree that the approved
16 minutes are the official record of a council
17 proceeding?

18 A I would not.

19 Q Okay. Tell me why you wouldn't agree
20 with that.

21 A There was one meeting that we had that
22 the minutes were in error, and I brought that out,
23 but the minutes were passed anyway.

24 This is not relevant to the February 9th
25 meeting.

1 Q Okay. But your answer there is based on
2 your particular experience with one meeting where
3 you believe council passed minutes that included an
4 error?

5 A I know they did, yes.

6 Q And not based on some idea that there is
7 an official source of council information, other
8 than the minutes?

9 A No, they're not. Well, there is the MP3,
10 which is the council meeting itself.

11 Q Right. So now we're gonna move into the
12 February 9, 2016 meeting.

13 A Goody.

14 Q Were you there?

15 A Yes, ma'am. For a little while.

16 MS. SPRUILL: Okay. The court reporter
17 is gonna mark this as Exhibit 2.

18 (Lockaby Exhibit 2, Agenda of the
19 Simpsonville City Council Business Meeting,
20 February 9, 2016, marked for identification.)

21 BY MS. SPRUILL:

22 Q My question to you -- once you've taken a
23 second to look at that is -- is that the agenda for
24 the February 9, 2016 meeting?

25 A I believe it is.

1 Q And is that agenda -- there are a lot of
2 items on that agenda.

3 A Yes, there are.

4 Q Would that be, about, an average number
5 of items on an agenda?

6 A That's a little more than usual.

7 Q How long did city council meetings
8 usually take?

9 A Anywhere from 30 minutes to whenever.

10 Q And --

11 A We've had some lengthy executive
12 sessions.

13 Q But that wasn't this meeting. The
14 portion we're about to talk about had not had an
15 executive session, yet; is that correct?

16 A No. The executive session is at the end
17 of the meeting, usually.

18 MS. SPRUILL: Next I'm gonna hand you
19 what the court reporter is gonna mark as
20 Exhibit 3.

21 (Lockaby Exhibit 3, Minutes of the
22 Simpsonville City Council Business Meeting,
23 February 9, 2016, marked for identification.)

24 BY MS. SPRUILL:

25 Q My question to you -- once you've had a

1 second to look at them -- is, are these the minutes
2 from that meeting?

3 A I would imagine they are.

4 Q You're welcome to look at them a little
5 longer.

6 A No. That's all right.

7 Q And my next question to you is, do you
8 agree with what's presented there for the portions
9 of the meeting for which you were present?

10 A Yes, ma'am.

11 Q Do you have any disagreement with the
12 transcript portion of those minutes?

13 A No.

14 Q Did you ask that that transcript be
15 included in the minutes?

16 A I asked for the minutes to be done,
17 verbatim.

18 Q Do you remember how you made that
19 request?

20 A I called Ms. Long, and she said I'd have
21 to do it in writing, so I submitted it in writing.

22 Q Do you remember when that was?

23 A Probably the day after. It was within a
24 day or two of the meeting because I know she does
25 the minutes fairly quickly.

1 Q In what format did you make that written
2 request?

3 A Probably an e-mail.

4 Q Would you have given a copy of that to
5 your attorney?

6 A No.

7 Q Do you still have it?

8 A No.

9 Q Do you know whether or not someone had
10 already transcribed that portion of the meeting at
11 the time you made that written request?

12 A No, ma'am. I do not know.

13 MS. SPRUILL: I'm gonna hand you Exhibit
14 4.

15 (Lockaby Exhibit 4, Minutes of the
16 Simpsonville City Council Business Meeting,
17 March 8, 2016, marked for identification.)

18 BY MS. SPRUILL:

19 Q These are the minutes from the next
20 meeting, and my question to you: With respect to
21 the February 9th minutes, did you vote to approve
22 those February 9th minutes?

23 A I did not, as the record shows.

24 Q Did you take any exception with the
25 February 9th minutes, at the time they were

1 presented for approval?

2 A I did.

3 Q Did you take any exception in writing to
4 those minutes?

5 A No.

6 Q Did you ask that anything be added or
7 removed?

8 A No.

9 Q What was your exception with the minutes
10 from the February 9th meeting?

11 A I was not there for the whole meeting, so
12 I could not approve the minutes when I wasn't
13 there.

14 Q Okay. But not anything for the period
15 where you were there was incorrect?

16 A It was not incorrect.

17 Q Okay. And now we're gonna backtrack to
18 what actually happened at the February 9th meeting.

19 Can you tell me, in your own words, what
20 happened and what we're here about now?

21 A We were discussing -- we have storm water
22 issues all over the city, and I'm sure every other
23 city does, but we were discussing replacing the
24 curbing for one person; and I raised my hand, and
25 when I was recognized, I asked Mr. Dyrhaug if we

1 were opening a can of worms; if fixing this guy's,
2 were we gonna have to fix everybody else's storm
3 water issues; and that's when Ms. Curtis said, Who
4 are you talking to; and I said, I'm talking to
5 Mr. Dyrhaug.

6 Q Okay.

7 A She -- I think she said -- I'm not
8 real -- I haven't read over the stuff.

9 Q And you are welcome to look at those
10 minutes that have that transcript in there.

11 A She told me, at one time, I need to talk
12 to the city attorney; and I said, I'm talking to
13 Mr. Dyrhaug right now.

14 Ms. Curtis had threatened to throw
15 another -- to remove another council member from
16 the meeting if he didn't hush or be quiet.

17 Q At the same meeting?

18 A Yes, ma'am, prior to me, and so he
19 hushed.

20 Q So I think we've gotten through you
21 asking the city administrator who was opening up a
22 can of worms.

23 A Yeah. In fact, in the minutes, it says
24 on request from Council Member Lockaby.

25 Q Yes, ma'am.

1 A Yeah. The mayor said, You didn't
2 identify anyone -- the mayor interrupts me and I
3 told her, I'm still speaking, please.

4 I still have the floor at that moment.

5 Q Okay.

6 A She says I'm arguing the point, but I'm
7 not; I'm asking him a question, just a plain
8 question, Are we opening a can of worms, and I
9 think we all know what opening a can of worms
10 means -- you're arguing the point but this isn't
11 the time for an argument. You can ask questions,
12 but this is an argument.

13 I wasn't arguing. There was no argument.

14 Q Okay.

15 A That's when she told me to ask the
16 attorney.

17 Q And the attorney is Mr. Holmes?

18 A Yes. I said I was asking Mr. Dyrhaug. I
19 hadn't even gotten to the attorney, yet, and I was
20 gonna move to him, but -- and I reminded her,
21 again, that I had the floor, I wasn't finished.

22 I asked her if she was gonna throw me out
23 like she just did Mr. Graham. She said if you keep
24 on, I will; and I said, I'm keeping on, because I
25 still had the floor, and about that time is when

1 she called Mr. Randolph up.

2 Q Okay. What happened then?

3 A He said, do you need her out? She says,
4 I need her out; so I gathered my stuff and I walked
5 out.

6 Q Did you say anything else before you
7 walked out?

8 A I don't believe I did.

9 Q Did you walk out by yourself?

10 A My husband was there with me.

11 Q Did you appeal the -- oh, I'm so sorry.

12 A I'm thinking about him being there with
13 me.

14 Q Yes, ma'am. Do you need a minute?

15 A No, go ahead. This is not unusual for
16 me. I'm ready when you are.

17 Q Did you appeal the ruling from the mayor?

18 A No.

19 Q Did Officer Randolph, or anyone else,
20 touch you?

21 A No, ma'am.

22 Q Were you, in any way, detained?

23 A I don't know what you mean by, detained.
24 I was with an officer, for a few minutes there,
25 while I was escorted out of the building.

1 Q Who was that?

2 A Officer Randolph.

3 Q Did he ever leave the council chambers?

4 A He walked out with me to make sure I got
5 out of the building.

6 Q Are you sure about that?

7 A Yes.

8 Q Did he leave the building?

9 A He walked me outside of the door -- to
10 the best of my knowledge, he walked me outside of
11 the door, and then my husband and I went and got in
12 the car.

13 Q Did anyone tell you what to do after you
14 left the council chambers?

15 A No, they did not. There was nobody out
16 there but me and my husband.

17 Q Did Officer Randolph say anything to you?

18 A I don't think he did.

19 Q Other than the language in the minutes,
20 the transcript in the minutes, did anyone tell you
21 that you needed to go anywhere specific, or needed
22 to do anything specific?

23 A No.

24 Q Did you attend the council meeting after
25 the February 9th meeting?

1 A Yes. That's where I voted 'no' on the
2 minutes.

3 Q Okay. Did anything unusual happen during
4 the course of that meeting?

5 A Not to my knowledge.

6 Q You mentioned earlier that the mayor had
7 called for order with another council member at
8 that same meeting.

9 Do you remember which council member that
10 was?

11 A Taylor Graham.

12 Q And other than the portion of the minutes
13 with that transcript in it, at this council
14 meeting, do you contend anyone from the city has
15 prevented you from speaking as you wished?

16 A Other than this, no.

17 MS. SPRUILL: I'm gonna hand you what the
18 court reporter is gonna mark as Exhibit 5, and
19 I will tell you that this is the amended
20 complaint filed in this matter.

21 (Lockaby Exhibit 5, Amended Complaint,
22 marked for identification.)

23 BY MS. SPRUILL:

24 Q Have you seen that document before?

25 A I'm sure I have.

1 Q Did you review it before it was filed?

2 A I don't remember.

3 Q Will you look for me at paragraph 25, on
4 page four, and it says there that you were, "Seized
5 and escorted away from the council chambers in the
6 custody of Defendants Randolph and Simpsonville."

7 Can you tell me, based on your memory of
8 that night, what that means?

9 A I was escorted out.

10 Q But you mentioned earlier that no one
11 touched you.

12 A He did not touch me; he escorted me out.

13 Q Okay. Do you believe that Officer
14 Randolph was doing anything other than acting as
15 the sergeant-at-arms for the meeting, at the
16 direction of the mayor?

17 A That's exactly what he was doing.

18 Q Do you believe Mayor Curtis was doing
19 anything other than acting as the presiding officer
20 of the meeting?

21 A Yes.

22 Q Okay. Tell me about that.

23 A I believe she was. I believe she was
24 being vindictive.

25 Q Okay. But you do agree, she was the

1 presiding officer of the meeting at the time?

2 A Yes.

3 Q And as the presiding officer, she would
4 perform all those functions of the chair, from
5 Robert's rules?

6 A Yes. Or the code of conduct, whatever it
7 was.

8 Q Okay. How do you contend you were
9 unlawfully detained?

10 A I was escorted out of the meeting; I was
11 not allowed to stay in the meeting; I was not
12 allowed to represent my ward or the rest of the
13 city.

14 Q Because of the direction given by the
15 presiding officer at the meeting?

16 A Yes.

17 Q How were you arrested?

18 A I think you've already asked me, and I've
19 answered this. He escorted me out of the building.
20 I'm sure if I had not gone willingly, then I would
21 have been physically escorted out.

22 Q But that didn't happen?

23 A He did not touch me.

24 Q How do you believe you've been damaged by
25 the events we've been discussing?

1 A Me, personally?

2 Q You, personally.

3 A I have been the subject of ridicule.
4 This is -- these -- this action -- my husband and I
5 went out for our anniversary. I heard about it,
6 then, because it was on the front page of the
7 newspaper.

8 Q And that's back in 2016?

9 A Yes. My brother-in-law was in the
10 hospital, in Columbia. We'd go up there. The
11 Mayor of Irmo comes in; we're introduced as being
12 from Simpsonville, and the mayor says, Oh, that's
13 where they kicked somebody out of a meeting; and my
14 sister-in-law says, That was her.

15 Q Do you have any knowledge of a similar
16 issue in Irmo regarding --

17 A I do not. My niece that lives in -- my
18 second cousin, that lives in Columbia, told my
19 aunt, that lives in Newberry, about it.

20 I was at my granddaughter's bridal shower
21 in December of '17. The lady there says, I know
22 you're the one that got kicked out of a meeting.

23 Q Where was that?

24 A It was in Simpsonville, at the community
25 center. Somebody recently said something about it,

1 but I don't remember who it was, or where it was.
2 I heard about it at work, every day.

3 Q Every day?

4 A Every day.

5 Q How did that come up?

6 A I'd go into a meeting, and they'd say, If
7 you don't behave, we're gonna remove you from the
8 meeting, ha-ha-ha-ha.

9 Q Anything else?

10 A Nothing else comes to mind.

11 Q Would you be able to place a dollar value
12 on those damages?

13 A I think my attorneys already have.

14 Q Right. But I'm asking you.

15 A Well, I'll answer your question with a
16 question. What value do you put on your freedom of
17 speech? What value would I put on being able to
18 represent the citizens of Simpsonville that did
19 elect me? What value would I put on the
20 embarrassment that I've received from numerous
21 places?

22 So I'll go with my attorneys on this.
23 Freedom of speech is a biggie, and being shut down,
24 not being able to speak, to me, is huge. I mean,
25 that's the first Bill of Rights, and the

1 forefathers thought of that when they -- other
2 countries, you don't have that freedom; we do. I
3 did that day until about that time.

4 Q Well, subject to the code of ordinances
5 and the rules of order.

6 A Well -- but I had the floor. Yes.

7 Q Can you describe -- do you know Officer
8 Randolph?

9 A I know him from his police work. My
10 husband and I used to do volunteer work for the
11 police department. When they would have things at
12 Heritage Park, we'd go and cook for them -- cook
13 burgers or fix meals -- or do things for the police
14 department; so, yes, I know him.

15 I don't know him well, but I know him. I
16 know most of the officers over there.

17 Q Do you go to church with him?

18 A No.

19 Q Do you know his family?

20 A I know his wife because he's brought her
21 to different things, or she showed up at different
22 things.

23 Q Would you describe your relationship with
24 Mayor Curtis for me?

25 A Business relationship, and that's it.

1 Q Do you know of any other documents --
2 e-mails or anything like that -- other than the
3 ones we've talked about today, that you've got in
4 front of you, that relate to your claims here?

5 A No.

6 MS. SPRUILL: Can we take a quick break?
7 I think I'm almost done, but I want to talk to
8 Mr. Holmes for just a minute.

9 MR. RADEKER: No problem.

10 - - -

11 (Off the record.)

12 - - -

13 BY MS. SPRUILL:

14 Q Council Member Lockaby, I just have one
15 more question for you.

16 A I'm not a council member anymore.

17 Q Mrs. Lockaby, is there anything else that
18 you plan to testify about if we try this case?

19 A If I'm asked a question, I will answer it
20 whether it's about this case or not.

21 Q Okay. Is there anything else -- now that
22 you've had a couple minutes to think about it, is
23 there anything else that you remember about that
24 February 9th meeting, that you could tell me about
25 today?

1 A No.

2 MS. SPRUILL: Okay. Your attorney will
3 have a chance, now, to ask you questions; but
4 that's all I have for right now.

5 EXAMINATION

6 BY MR. RADEKER:

7 Q At the February 9, 2016 meeting, how
8 orderly would you say that your conduct was at that
9 meeting?

10 A I never raised my voice.

11 You mean before I was removed?

12 Q Yeah. While you were in the meeting.

13 A Oh, I was fine. The MP3 will show you
14 that I never raised my voice; I just plainly told
15 her.

16 Q And how consistent with decorum would you
17 say your actions were, while you were in that
18 meeting?

19 A Very much so.

20 MR. RADEKER: Thank you very much. I
21 don't have anything further for you.

22 MS. SPRUILL: No further for me.

23 WITNESS: And when he asked me to come
24 with him, I just gathered my stuff up and
25 walked out. No ugly.

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COURT REPORTER: Do you need a copy,
Drew?

MR. RADEKER: Yes.

- - -

(The deposition concluded at 3:00 p.m.)

- - -

(Witness excused.)

- - -

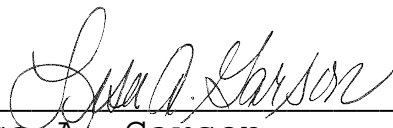
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CERTIFICATE OF REPORTER

I, Lisa A. Garson, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate, and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my official seal this 7th day of February, 2019, at Greenville, Greenville County, South Carolina.



Lisa A. Garson
Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
December 19, 2019

CODE OF ORDINANCES
CITY OF
SIMPSONVILLE, SOUTH CAROLINA

Published by Order of the City Council

UPDATED November 24, 2015



ARTICLE II. COUNCIL[†]

DIVISION I. GENERALLY

Sec. 2-31. Powers.

Except as otherwise provided, all powers of the city and the determination of all matters of policy shall be vested in the council, with each member, including the mayor, having one vote.

(Code 1995, § 2-36)

State law reference – Similar provisions, S.C. Code 1976, § 5-11-30.

Sec. 2-32. Mayor pro tempore.

(a) The council shall, at the first meeting of the newly constituted council, after any general election for municipal council, elect one of its members as mayor pro tempore for a term of two years.

(b) It shall be the duty of the mayor pro tempore to act as mayor during the absence or disability of the mayor, or in the case of a vacancy in the office of mayor. After an extended absence of six months, the mayor pro tempore's salary shall be adjusted to the current salary for the mayor for the remainder of the absence.

(Code 1995, § 2-37; Ord. No. 2015-03, 6-9-2015)

State law reference – Mayor pro tempore, S.C. Code 1976, § 5-7-190.

Sec. 2-33. Oath of mayor and council members.

The mayor and council members before entering upon the duties of their respective offices shall take the following oath:

"I do solemnly swear (or affirm) that I am duly qualified, according to the constitution of this state, to exercise the duties of the office to which I have been elected and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of the state and the United States.

"As mayor (or councilmember) of the City of Simpsonville, I will equally, fairly, and impartially, to the best of my ability, and skill, exercise the trust reposed in me, and will use my best endeavor to preserve the peace and carry into effect according to law the purpose for which I have been elected. So help me God."

(Code 1995, § 2-38)

State Law Reference: Article VI, Section 5, SC Constitution; Section 5-15-150.

[†] State law reference – Council form of government, S.C. Code 1976, § 5-11-10 et seq.

Sec. 2-34. Duties of mayor and council.

(a) The council members shall strive to attend all regular and special meetings of the city council and shall hold themselves at all times in readiness to perform any duty entrusted to them by the city council. The council members shall perform the duties thus imposed upon them with dispatch and to the best of their abilities. If a council member is unable to attend a regular or special meeting of the city council, he or she shall notify the city administrator.

(b) A mayor shall be elected from the city at large in the manner provided by law. The mayor shall be recognized as the head of the city government for all ceremonial purposes and by the governor for purposes of military law. He or she shall preside over the meetings of the city council, but shall have no regular administrative duties. The mayor shall provide the city council with information, guidance and leadership in matters of policy determination.

(c) Council members may attend meetings of city boards and commissions but shall not participate in board or commission discussions except by specific direction of city council or when the meeting relates to their property.

(Ord. No. 2015-03, 6-9-2015)

Sec. 2-35. Qualifications of mayor and council members; proceedings to vacate offices.

(a) The mayor and council members shall be qualified electors of the city. Except where authorized by law, neither the mayor nor any member of council shall hold any other elected position in local, state or federal government or any other municipal office or municipal employment. The mayor or any councilmember shall forfeit his office if he:

- (1) Lacks at any time during his term of office any qualification for the office prescribed by city ordinance or the general law and constitution of the state;
- (2) Violates any express prohibition of S.C. Code 1976, §§ 5-1-10 through 5-17-30;
- (3) Is convicted of a crime of moral turpitude.

(b) The council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of office as provided in S.C. Code 1976, § 5-7-210.

Sec. 2-36. Communication between the mayor and the city council.

The mayor shall relate to and communicate with the chair of council committees and with the city council as a whole any and all problems, situations and conditions which arise concerning any department or activity of the city. Except for the purpose of inquiry, the members of the city council shall communicate only with the mayor and city administrator in any and all matters concerning any department or activity of the city.

(Code 1995, § 2-40)

Sec. 2-37. Emergency powers of mayor.

(a) A state of emergency shall be deemed to exist whenever, during times of great public crisis, disaster, rioting, civil disturbance, catastrophe, or for any other reason, municipal public safety authorities are unable to maintain public order or afford adequate protection for lives, safety, health, welfare, or property.

(b) In the event of a state of emergency threatening or endangering the lives, safety, health and welfare of the people within the city or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of a state of emergency, and in order to more effectively protect the lives, safety and property of the city, to define and impose a curfew applicable to all persons within the jurisdiction of the city.

(c) The mayor is hereby authorized and empowered to limit the application of the curfew to any area specifically designated and described within the jurisdiction of the city and to specific hours of the day or night; and to exempt from the curfew police officers, firefighters, doctors, nurses, and others as may be essential to the preservation of public order and immediately necessary to serve the needs of the people within the city.

(Code 1995, § 2-41)

Sec. 2-38. Compensation of mayor and council members.

(a) The annual salary of the mayor, the mayor pro tem, and the council members shall be set from time to time in accordance with S.C. Code 1976, § 5-7-170.

(b) No ordinance increasing or decreasing the salary of council members and the mayor shall become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members, whether or not they were elected in that election.

(c) The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties.

(Code 1995, § 2-42; Ord. No. 2015-03, 06-09-2015)

Secs. 2-39 – 2-60. Reserved.

DIVISION 2. Meetings[‡]**Sec. 2-61. Date and time.**

(a) The council, after public notice, shall meet regularly at least once in every month at such times and places as the council may prescribe by rule.

[‡] State law reference – Council meetings, S.C. Code 1976, § 5-7-250.

(b) Special meetings of council may be held on the call of the mayor or a majority of the members. Notice of a special meeting shall be given immediately to all available members and the news media by the city clerk.

(c) All regular and special meetings of the council shall be open to the public.

(Code 1995, § 2-66; Ord. No. 2015-03, 06-09-2015)

Sec. 2-62. Executive sessions.

(a) The council may hold executive sessions as permitted by the state freedom of information act and this Code at such times and in such places as may be deemed necessary and in the public interest by a favorable vote of the council.

(b) Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this section, formal action means a recorded vote committing the council to a specific course of action.

(Code 1995, § 2-67)

State law reference –Executive sessions of a public body, S.C. Code 1976, § 30-4-70.

Sec. 2-63. Quorum and rules of order.

A majority of the council members serving shall constitute a quorum for the conduct of business at any meeting. The mayor or mayor pro tempore shall preside, except that in the absence of both, the members present shall elect a presiding member. Except as otherwise required by state law or ordinance, all proceedings of council shall be governed by the latest edition of “Robert’s Rules of Order, Newly Revised,” and the city attorney shall act as parliamentarian.

(Code 1995, § 2-68)

State law reference – Rules and procedures for council meetings, S.C. Code 1976, § 5-7-250(b).

Sec. 2-64. Voting requirements.

(a) All actions of the council shall be by majority vote of the members present at a public meeting, unless a different majority is required by state law or by ordinance.

(b) Every member of council present shall vote on every question except when required to refrain from voting by state law, subject to exceptions as set out in S.C. Code 1976, § 5-7-130.

(c) The vote on every question shall be by voice vote or ballot, unless a roll call vote on a question shall be called for by any member of council. The vote of each member voting on the question shall be recorded in the minutes by the city clerk. Where the vote of an individual council member is not audible to the city clerk during a voice vote, and the member has made no indication that he or she is refraining from the vote, the minutes will reflect that the member voted in the affirmative.

(d) No member of council may leave the council chamber while in public session without permission of the presiding officer.

(Code 1995, § 2-69; Ord. No. 1999-01, § 1, 1-26-1999; Ord. No. 2015-03, 06-09-2015)

Sec. 2-65. Minutes.

The clerk shall keep the minutes of all public meetings of council which shall be a matter of permanent public record. At each council meeting the minutes of the previous meeting shall be presented for approval. Minutes shall not be considered the official record of a meeting until approved by council. Any member of the council desiring to express a position on a matter voted upon by council in the minutes may do so by presenting the position in writing to the council not later than the next meeting at which votes may be taken.

(Code 1995, § 2-69)

Sec. 2-66. Appearance of citizens.

(a) Any citizen of the municipality or others who have standing in the municipality, such as business owners, shall be entitled to an appearance before council at any regular meetings concerning any municipal matter, with the exception of personnel matters. At least 10 minutes prior to the commencement of a city council meeting, such persons wishing to appear before council must place his or her name, address, and topic to be addressed on the public comments sign-up list maintained by the city clerk.

(b) Comments to the council shall be limited to three minutes, unless the city council authorizes one extension of three minutes. All remarks made by the speaker shall be addressed to council as a whole and not to any individual member of council. No profanity or personal attacks will be allowed; the speaker will forfeit their remaining time as a result of either. No person shall be permitted to enter into any discussion without the permission of the presiding officer. The purpose of addressing council is to allow council members to hear the opinions of the citizens and is not intended to afford the opportunity to engage in a debate or dialogue. Therefore, no reply or rebuttal by council members is required.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-67. Rules of decorum.

While any meeting of city council is in session, the following rules of decorum shall be observed.

(a) Any person who speaks at a city council meeting shall conduct himself or herself in a manner appropriate to the decorum of the meeting and shall not use any profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct. Any person who makes such remarks or otherwise engages in disorderly conduct which disrupts or otherwise impedes the orderly conduct of a city council meeting shall, at the discretion of the presiding officer, be barred from further audience before city council during that meeting and may be removed from the building.

(b) Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the presiding officer, it shall be the duty of such law enforcement officer to remove from the city council meeting any person who is disturbing the proceedings of the city council.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-68. Agenda.

Matters to be considered by the council at a Tuesday council meeting shall be received in the city clerk's office by noon the preceding Wednesday before a scheduled Tuesday council meeting. The mayor shall set the order of business of items on the agenda. The city clerk will have the agenda ready for council, public and media review by 5:00 p.m. the preceding Friday before a Tuesday council meeting. Matters not on the agenda may be considered upon request of a member only by majority vote.

(Code 1995, § 2-72; Ord. No. 2015-03, 06-09-2015)

Sec. 2-69. City administrator to attend.

The city administrator shall attend all meetings of the council unless excused by the council. He shall keep the council advised of the status of matters pending for council consideration, make recommendations and present ordinances and resolutions for council action, participate in the discussion of any matter involving the welfare of the city, and present items on the council agenda.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-70. City attorney to attend.

The city attorney shall attend all meetings of the council unless excused by the council. He shall act as parliamentarian, propose ordinances and resolutions, review all ordinances, resolutions and documents presented to council and give opinions upon questions of procedure, form and law to any member of council and the city administrator.

(Code 1995, § 2-73; Ord. No. 2015-03, 06-09-2015)

Sec. 2-71. City Clerk to attend.

The city clerk shall be ex officio clerk of the city council. The clerk shall give notices of meetings, post the agenda, attend regular and special meetings, record the votes of the council, keep minutes of council meetings and perform other duties as may be assigned by the council or the city administrator.

(Code 1995, § 2-74)

Sec. 2-72. Committee of the Whole.**(a) Purpose and Meeting Time.**

- (1) The City Council shall meet as a Committee of the Whole on the fourth Tuesday of the month beginning at 6:30 PM except during the months of November and December when a meeting of the Committee of the Whole will normally not occur unless called by the Mayor or a majority of council. The Committee of the Whole shall receive information concerning issues that are anticipated to come before Council. The purpose of the meeting is to provide a forum for a thorough and detailed discussion and consideration of prospective or current council agenda items.
- (2) Meetings of the Committee of the Whole will be conducted in accordance with the Council's rules of procedure, including Robert's Rules of Order. However, the presiding officer may allow procedures that would have the purpose of receiving beneficial information and facilitating healthy discussion.

(b) Operation.

- (1) The Mayor shall chair the Committee of the Whole meeting.
- (2) Public notice shall be given for all meetings as prescribed by law and agendas will be posted on the City's website.

AGENDA OF THE
SIMPSONVILLE CITY COUNCIL
BUSINESS MEETING
February 9, 2016
6:30 p.m.
City Council Chambers – 118 N. E. Main St.

1. CALL TO ORDER Mayor Curtis
2. ROLL CALL Phyllis Long, City Clerk
3. PLEDGE OF ALLEGIANCE
4. PUBLIC HEARING
for the Greenville County Redevelopment Authority 2016 Program Year Annual Action Plan
5. APPROVAL OF MINUTES – January 12, 2016 and January 26, 2016
6. SPECIAL RECOGNITION OF COACH GREG PORTER
for being awarded 2015 SC Football Coach of the Year
7. CITIZENS COMMENTS
8. COUNCIL COMMENTS
 - 1) Hillcrest High School Scholastic Achievements Councilmember Graham
 - 2) Hillcrest High School Athletic Achievements Councilmember Graham
 - 3) Budget Comments Councilmember Gooch
 - 4) Update on the Grandview & Davenport Intersection Councilmember Gooch
9. BUSINESS
 - a. *Matters Referred by the Planning Commission* Planning & Zoning Manager, Jason Knudsen
 - 1) 2nd Reading of AXZ-2016-02, Proposed Annexation at 700 Fairview Road
 - 2) 1st Reading of TX-2016-01, Electronic Message Display Signs in the R-OI District
 - 3) SP-2016-03, Harrison Bridge Center ID, Major Change
 - b. *Other Business*
 - 1) Resolution 2016-01, GCRA Annual Action Plan Imma Nwobodu, GCRA
 - 2) Resolution 2016-02, Safety Policy City Administrator, David Dyrhaug
 - 3) Appointment to the Election Commission City Administrator, David Dyrhaug
 - 4) Bid Acceptance for Wetland Remediation City Administrator, David Dyrhaug
 - 5) Mutual Aid Agreements City Administrator, David Dyrhaug
 - 6) Curb Replacement at Aster Drive City Administrator, David Dyrhaug
 - 7) Amphitheater Chairs City Administrator, David Dyrhaug
 - 8) Budget Workshop Dates City Administrator, David Dyrhaug
 - 9) 1st Reading of Ordinance 2016-01, Timing of Taking Office Councilmember Braswell
 - 10) Council Rules of Procedure Councilmember Hulehan
 - 11) Qualifications for Serving on Boards & Commissions Councilmember Gooch
 - 12) Orientation/Training for Council Councilmember Graham
10. EXECUTIVE SESSION
 - 1) The receipt of legal advice on matters covered by the attorney-client privilege and pertaining to contractual arrangements.
11. ADJOURN

PLEASE NOTE: This Agenda is accurate as of the Friday immediately preceding the Council meeting but is subject to change until twenty four (24) hours prior to the meeting. Please contact the City Clerk the day of the meeting for the latest agenda information.



**Minutes of the
Simpsonville City Council
Business Meeting
February 9, 2016
6:30 p.m.
City Council Chambers – 118 N.E. Main Street**

CALL TO ORDER – Mayor Curtis

COUNCIL PRESENT – Councilmember Gooch, Councilmember Graham, Councilmember Hulehan, Councilmember Braswell, Councilmember Cummings, Councilmember Lockaby, Mayor Curtis

PLEDGE OF ALLEGIANCE

PUBLIC HEARING – Greenville County Redevelopment Authority 2016 Program Year Annual Action Plan

APPROVAL OF MINUTES

- Motion by Councilmember Lockaby with a 2nd by Councilmember Gooch to approve minutes from January 12, 2016 and January 26, 2016. Motion carried unanimously.

SPECIAL RECOGNITION – Coach Greg Porter, 2015 SC Football Coach of the Year

CITIZEN COMMENTS - None

COUNCIL COMMENTS

- Hillcrest High School Scholastic Achievements – Councilmember Graham
- Hillcrest High School Athletic Achievements – Councilmember Graham
- Budget Comments – Councilmember Gooch
- Update on the Grandview and Davenport Intersection – Councilmember Gooch
- Motion by Councilmember Graham with a 2nd by Councilmember Lockaby to appeal Council Comments to allow further comments on non-voting items. Roll call vote taken, Yes=2, No=5. Councilmembers Gooch, Hulehan, Braswell, Cummings and Mayor Curtis voting No. Motion failed.

BUSINESS

a. Matters Referred by the Planning Commission

- Motion by Councilmember Graham with a 2nd by Councilmembers Cummings and Braswell pass 2nd Reading of AXZ-2016-02, Proposed Annexation at 700 Fairview Road. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmembers Gooch and Braswell to pass 1st Reading of TX-2016-01, Electronic Message Display Signs in the R-OI District. Motion carried unanimously.
- SP-2016-03, Harrison Bridge Center ID, Major Change, Withdrawn.



b. *Other Business*

- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings to pass Resolution 2016-01, GCRA Annual Action Plan. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to pass Resolution 2016-02, Safety Policy. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to appoint Stephanie Kelley to the Election Commission. Motion passed unanimously.
- Motion by Councilmember Lockaby with a 2nd by Councilmember Graham to accept the bid for Wetlands Remediation from Apex Companies. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to accept the Mutual Aid Agreements as written. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings giving City Administrator, David Dyrhaug permission for completing application with GLDTC for curb replacement at Aster Drive.
- On written request from Councilmember Lockaby:
 Councilmember Lockaby was recognized by Mayor Curtis and had the floor.
 Councilmember Lockaby: Are we opening a can of worms? Cause if we fix this...
 Mayor Curtis: Who are you talking to?
 Councilmember Lockaby: I'm looking at Mr. Dryhaug.
 Mayor Curtis: Well you didn't identify anyone...excuse me.
 Councilmember Lockaby: Mr. Dryhaug, I'm looking straight at you. Are we opening a can of worms when we do this? I'm just asking the question.
 Mr. Dyrhaug: I don't have an answer for that, but I...
 Councilmember Lockaby: Well.
 Mr. Dyrhaug: The issue is that so when this road was resurfaced that the reveal on the curb was diminished and that's caused an issue of storm water coming from the road onto private properties.
 Councilmember Lockaby: And we have storm water issues all over the city.
 Mayor Curtis: [Not intelligible]
 Councilmember Lockaby: I'm still speaking, please.
 Mayor Curtis: Yes, but you're arguing the point and this isn't a time for argument. You can ask questions, but this isn't argument.
 Councilmember Lockaby: I'm not arguing. I'm, I'm stating a fact that we have storm water issues all over the city. Is this opening a can of worms?
 Mayor Curtis: Well, ask our attorney.
 Councilmember Lockaby: I was asking Mr. Dryhaug, I haven't even gotten to the attorney yet.
 Mayor Curtis: Well, okay, that's fine. Mr. Holmes, could you...
 Councilmember Lockaby: I'm not finished.
 Mayor Curtis: You are now. [Gavels] Thank you. Mr. Holmes...
 Councilmember Lockaby: I am not.
 Mayor Curtis: Yes, you are. Mr. Holmes, could you...
 Councilmember Lockaby: [talks over, not intelligible] ...we had to do...
 Mayor Curtis: [Gavels 3 times] Order. Order. Order.
 Councilmember Lockaby: You going to throw me out?
 Mayor Curtis: [Gavels] Order.
 Councilmember Lockaby You going to threaten to throw me out?
 Mayor Curtis: Keep it up and you'll find out.
 Councilmember Lockaby: I guess I will.
 Mayor Curtis: Okay.

Councilmember Lockaby: I'm keeping it up.

Mayor Curtis: [Gavels] Mr. Holmes will you please answer her question? Thank you.

Councilmember Lockaby: I know if you want to answer her question, I haven't asked one.

Mayor Curtis: Can I get the police officer from the back to enter the front, please?

Officer: Need her out?

Mayor Curtis: I need her out.

Officer: Councilmember Lockaby, will you come with me, please?

Mayor Curtis: We'll take a five minute recess. [Gavels.]

Councilmember Lockaby leaves the council chamber at 7:30pm.

Brief recess until 7:33pm when meeting resumed.

- Motion by Councilmember Gooch to withdraw original motion, 2nd by Councilmember Cummings. Motion to withdraw passes by vote of Yes=6, No=0. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to enter into agreement with Seating Solutions and TRZ Management for Amphitheater Chairs. Motion passed with vote of Yes = 5, No = 1. Councilmember Gooch voting No.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to accept the Budget Workshop Dates presented by City Administrator, David Dyrhaug. Motion passed with vote of Yes = 6 No = 0.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to pass 1st Reading of Ordinance, 2016-01, Timing of Taking Office. Motion passed with vote of Yes = 6, No =0.
- Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to move the Council Rules of Procedure item back to the next workshop session for further discussion. Motion passed with vote of Yes = 6, No = 0.
- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to change the Qualifications for Serving on Boards and Commissions adding that you must be a registered voter. Motion by Councilmember Gooch to withdraw the motion, 2nd by Councilmember Hulehan. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to have (4) four Orientation/Training sessions this year for council inviting MASC and ACOG to conduct the training. Vote taken, Yes=2, No=4. Councilmembers Gooch, Hulehan, Cummings and Mayor Curtis voting No. Motion failed.

EXECUTIVE SESSION

- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to go into Executive Session for the receipt of legal advice on matters covered by the attorney-client privilege and pertaining to contractual arrangements. Motion carried with vote Yes = 6, No = 0.
- Motion by Councilmember Graham with a 2nd by Councilmembers Cummings and Hulehan to return from Executive Session – No action taken, no vote taken.

ADJOURNMENT

- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to adjourn. Motion carried with vote of Yes =6, No = 0.

Minutes of the
Simpsonville City Council
Business Meeting
March 8, 2016
6:30 p.m.
City Council Chambers – 118 N.E. Main Street

CALL TO ORDER – Mayor Curtis

COUNCIL PRESENT – Councilmember Gooch, Councilmember Graham, Councilmember Hulehan, Councilmember Braswell, Councilmember Cummings, Councilmember Lockaby, Mayor Curtis

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings to approve minutes from February 9, 2016 and February 23, 2016. Motion carried with vote of Yes = 6, No = 1. Councilmember Lockaby voting No.

SPECIAL RECOGNITION – Al Dreifort for his many years of service on the Board of Zoning Appeals

CITIZEN COMMENTS

- Derrick Quarles – P. O. Box 1054 – Signed up to speak on Accreditation and did not speak
- Patty Hendershot – 409 N. Main Street, #18, Coachwood Park – Bicycle Shop rezoning
- Joe Loe – 409 N. Main Street – Signed up to speak on Bicycle Shop rezoning but did not speak

COUNCIL COMMENTS - None

BUSINESS

a. *Matters Referred by the Planning Commission*

- Motion by Councilmember Graham with at 2nd by Councilmembers Braswell pass 2nd Reading of TX-2016-01, Electronic Message Display Signs in the R-OI District. Motion carried unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmembers Lockaby to accept the recommendation of the Planning Commission and deny 1st Reading of Z-2016-01, Rezoning of 421 N. Main Street (Bicycle Shop). Motion carried unanimously.
- Motion by Councilmember Cummings with a 2nd by Councilmember Gooch to pass SP-2016-04, Harrison Bridge Center ID, Major Change. Motion carried unanimously.

b. *Matters Referred by the Committee of the Whole*

- Motion by Councilmember Cummings with a 2nd by Councilmember Braswell not to move forward with the changes to how items are published on Social Media. Motion carried unanimously.
- Councilmember Lockaby deferred item on Procedures for Removing a Councilmember to upcoming discussion on Rules of Procedure.



- Motion by Councilmember Lockaby with a 2nd by Councilmember Graham to move forward with the Accreditation Payment. Roll call vote taken, Yes = 3, No = 4. Councilmember Gooch, Councilmember Hulehan, Councilmember Cummings and Mayor Curtis voting No. Motion failed.
- Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to amend the agenda for amending the budget for fiscal year 2015-2016 and to move the item to the next Committee Meeting. Roll call vote taken, Yes = 4, No = 3. Councilmember Graham, Councilmember Braswell and Councilmember Lockaby voting No. Motion failed to carry 2/3 vote.
- Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to withdraw the motion to amend agenda.

c. *Old Business*

- Motion by Councilmember Braswell with a 2nd by Councilmember Hulehan to pass 2nd Reading of Ordinance 2016-01, Timing of Taking Office. Motion carried unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Gooch to accept the Municipal Match Resurfacing Program presented by David Dyrhaug, City Administrator. The costs to the City for fiscal year 2016-2017 is \$150,000.00 with a match of \$107,602.06. Motion carried with a vote of Yes = 6, No = 1. Councilmember Gooch voting No.

EXECUTIVE SESSION

- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to go into Executive Session to receive legal advice where the legal advice relates to a pending threatened, or potential claim and other matters covered by the attorney-client privilege. Motion carried unanimously.
- Back in session– No action taken, no vote taken.

ADJOURNMENT

- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to adjourn. Motion carried unanimously.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CASE NO. 2018-CP-23-00731

Sylvia Lockaby,

Plaintiff,

vs.

City of Simpsonville, Janice Curtis, and
Adam Randolph,

Defendants.

AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

The Plaintiff, complaining of the Defendants herein, alleges as follows:

1. The Plaintiff, Sylvia Lockaby (hereinafter "Plaintiff"), is a citizen and resident of the County of Greenville, State of South Carolina.
2. Defendant City of Simpsonville (hereinafter "Defendant Simpsonville") is a municipal corporation the operates the City of Simpsonville, South Carolina, which is in Greenville County.
3. Defendant Janice Curtis (hereinafter "Mayor Curtis") is a citizen and resident of the County of Greenville, State of South Carolina.
4. Defendant Adam Randolph (hereinafter "Defendant Randolph") is a citizen and resident of the County of Greenville, State of South Carolina, and for all material purposes to this action, is an employee of Defendant Simpsonville, who works for the Simpsonville Police Department, a department of Defendant Simpsonville.
5. This court has subject matter jurisdiction of this action and personal jurisdiction over the parties hereto.
6. The acts and omissions of the Defendants subject of this action occurred in Greenville County.



7. This action is brought pursuant to the South Carolina Tort Claims Act, pursuant to 42 U.S.C. § 1983, *et seq.*, and pursuant to all other applicable law.

8. In February 2016, Mayor Curtis and Plaintiff served as elected officials on the Simpsonville City Council. Mayor Curtis served as the Defendant City of Simpsonville's mayor and Defendant Randolph served as a police officer for Defendant Simpsonville.

9. At all times material to this action, Defendant Simpsonville had not enacted any restrictions on the conduct or speech of City Council members at meetings that was content neutral, was narrowly tailored to serve a governmental interest, and left open ample alternative means of expression.

10. At all times material to this action, Defendant Simpsonville had not enacted any restrictions on the conduct or speech of City Council members at meetings at all.

11. At all times material to this action, Defendant Randolph was responsible for assisting Defendant Simpsonville and Mayor Curtis in keeping order and maintaining public safety at the monthly business meetings of the Simpsonville City Council.

12. On February 9, 2016, Defendant Simpsonville had its monthly public business meeting in the city council chambers at 118 N.E. Main Street in Simpsonville, South Carolina.

13. Plaintiff, Defendant Rudolph and Mayor Curtis were present for the February 9, 2016 meeting.

14. At all times during this meeting, Plaintiff conducted herself lawfully and peaceably.

15. At no time during this meeting was Plaintiff's behavior disruptive of the meeting.

16. At the meeting, Simpsonville City councilmembers, including Plaintiff and Mayor Curtis, had discussion of a motion by councilmember Matthew Gooch (seconded by councilmember Ken Cummings) to give permission for Simpsonville City Administrator David

Dyrhaug to complete an application with the Greenville Legislative Delegation Transportation Committee (GLDTC) for curb replacement at Aster Drive in Simpsonville.

17. During discussion of this motion, Plaintiff was recognized and had the floor.

18. Plaintiff began by asking a question of Administrator Dyrhaug about the specific application for curb replacement in Aster Drive as it related to the citywide plan of storm water displacement and infrastructure maintenance, but, before Plaintiff could ask a follow-up question of Dyrhaug, Mayor Curtis interrupted Plaintiff by accusing her of arguing the point, which according to Mayor Curtis, was outside the scope of discussion for the motion.

19. Plaintiff objected to the Mayor's characterization of her discussion with Administrator Dyrhaug and the Mayor's interpretation of the meaning of "discussion" by saying "I'm not arguing. I'm, I'm stating a fact that we have storm water issues all over the city. Is this opening a can of worms?"

20. Despite Mayor Curtis's attempts to interrupt Plaintiff's discussion with Administrator Dyrhaug, Plaintiff persisted in trying get an answer from Dyrhaug when Mayor Curtis declared Plaintiff was finished and began banging the gavel several times and yelling "Order!"

21. After Plaintiff questioned whether Mayor Curtis intended to eject Plaintiff from the meeting for pursuing the inquiry with Dyrhaug, Mayor Curtis indicated she was and told Officer Randolph to approach the front of council chambers.

22. After Defendant Randolph arrived near the front of the room, Mayor Curtis said to Defendant Randolph: "I need her out." At which point, Defendant Randolph said, "Councilmember Lockaby, will you come with me please?"

23. Plaintiff understood that she was being detained for disrupting the proceeding and that she was not free to remain in her councilmember seat.

24. Plaintiff obeyed Defendant Randolph's commands and made no attempt to flee the scene or in any fashion physically confront him.

25. Immediately thereafter, Plaintiff was seized and escorted away from the council chambers in the custody of Defendants Randolph and Simpsonville.

26. A copy of the minutes for the February 2016 business meeting, as approved by the city council for Defendant Simpsonville at the March 2016 meeting, are attached hereto as an exhibit to this complaint.

27. The City Council Chambers at 118 N.E. Main Street in Simpsonville, South Carolina is a traditional public forum.

28. The discussion of curb replacement and storm water issues is a matter for public concern for Simpsonville, South Carolina.

29. Plaintiff's conduct at the meeting in question was not disorderly and she did not breach any rules concerning the conduct of a councilmember when engaged in discussion in public session.

30. Plaintiff did not speak any "fighting words."

31. Defendant Randolph and Defendant Simpsonville did not have probable cause to believe Plaintiff was being disorderly or was in any way disrupting the proceeding.

32. Mayor Curtis' conduct in repeatedly interrupting Plaintiff while she had the floor, as well as Mayor Curtis' enforcement of her absurd interpretation of "discussion" to limit Plaintiff's ability to address a matter of public concern with Defendant Simpsonville's chief executive, effectively suppressed Plaintiff's ability to exercise oversight over Defendant Simpsonville and a matter of public concern that affects many city residents.

33. Mayor Curtis' conduct described in this complaint, including, but not necessarily limited to, her command to eject Plaintiff from the public meeting based upon the content of what

Plaintiff was saying about a matter of public concern, was grossly negligent and evidences a reckless disregard for the Plaintiff's rights and the freedom of speech and thought during the Simpsonville council meetings.

34. None of the Defendants had any probable cause to believe that Plaintiff was committing or had committed any crime.

35. None of the Defendants had any reasonable belief that they could lawfully remove the Plaintiff from the meeting.

36. The Defendants were grossly negligent and failed to exercise even slight care, including, but not necessarily limited to, in the following respects:

- a. In seizing Plaintiff without probable cause;
- b. In failing to exercise even slight care to avoid violating Plaintiff's right to be free from an unreasonable seizure and free from suppression of her freedom of speech;
- c. In causing Plaintiff to be unlawfully detained; and
- d. In failing to take that degree of skill and care which a reasonable and prudent person would have done under the same or similar circumstances.

37. The acts and omissions of the Defendants have caused Plaintiff to sustain damages and entitle Plaintiff to recover damages from the Defendants.

38. Plaintiff has suffered damages, including, but not limited to, humiliation, public ridicule, and loss of personal reputation as a consequence of this arrest, as well as the expense of hiring an attorney to vindicate her constitutional rights.

39. The conduct of the Defendants and their agents and servants toward Plaintiff was deliberate, wanton, grossly negligent and violated state and federal law.

FOR A FIRST CAUSE OF ACTION
(Civil/Constitutional Rights Violation – 42 U.S.C. § 1983)

40. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

41. Defendants falsely and wrongfully arrested Plaintiff while Plaintiff was exercising her clearly established, fundamental, constitutional rights of free speech and petition.

42. This false and wrongful arrest was in violation of Plaintiffs' First and Fourth Amendment rights as incorporated by the Fourteenth Amendment of the United States Constitution.

43. At the time Plaintiff was arrested, Plaintiff was exercising her rights guaranteed under the First Amendment to the United States Constitution and fulfilling her duty of oversight over matters of public concern for the benefit of residents of the City of Simpsonville.

44. Defendants Mayor Curtis and Randolph are named in this lawsuit and sued in their individual capacity for purposes of damages pursuant to 42 U.S.C. § 1983 and the underlying decisional law issued by the United States Supreme Court and its inferior courts.

45. Mayor Curtis was deliberately indifferent towards Plaintiff's First and Fourth Amendment Constitutional rights by ordering Defendant Randolph to arrest Plaintiff for asking questions of the City Administrator when Plaintiff had a constitutional right to do so in the Simpsonville council chambers, a traditional public forum, during an open public meeting.

46. Defendant Curtis was deliberately indifferent and demonstrated that indifference by giving obviously unconstitutional orders to Defendants Randolph and Simpsonville to arrest the Plaintiff in clear violation of Plaintiff's fundamental right of speech.

47. Defendant Randolph had a sworn duty to preserve, protect, and defend the Constitution of South Carolina and of the United States of America and was required by the laws of South Carolina and the United States of America to refuse to obey the unlawful order by Mayor Curtis to arrest Plaintiff who was engaged in lawful and peaceful speech in violation of Plaintiff's First

and Fourth Amendment Constitutional Rights as incorporated by the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

48. Even if Defendant Randolph was just following the directives given to him by a superior, he still violated his sworn duty by arresting the Plaintiff.

49. Plaintiff seek damages and punitive damages in an amount to be determined by a jury when informed of the facts in this matter and properly charged with the law by this court. Plaintiffs also seek attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

FOR A SECOND CAUSE OF ACTION
(Gross Negligence)

50. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

51. Plaintiff was arrested without probable cause by the Defendants, who did not have an objective, good-faith belief that Plaintiff was guilty of any offense.

52. Defendant Simpsonville failed to properly train and supervise the agents and employees of the Simpsonville Police Department.

53. Defendant Simpsonville was grossly negligent in training and supervising its staff and officers, including, but not necessarily limited to, Defendant Randolph.

54. Defendant Simpsonville owed Plaintiff a duty to properly train and supervise its personnel and to refrain from arresting Plaintiff without probable cause.

55. Defendant Simpsonville and its agents and servants breached this duty and were deliberate and grossly negligent, including, but not necessarily limited to, in the following respects:

- a. In arresting Plaintiff without probable cause to believe she had committed a crime;
- b. In failing to perform an adequate investigation;

- c. In failing to exercise even slight care to avoid violating Plaintiff's right to be free from an unreasonable seizure; and
- d. In causing Plaintiff to be unlawfully detained against her will.

56. As a proximate result, Plaintiff sustained damages.

FOR A THIRD CAUSE OF ACTION
(False Imprisonment/Seizure)

57. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

58. The Defendants falsely arrested and falsely imprisoned Plaintiff.

59. The Defendants, without cause or legal justification, restrained and confined Plaintiff.

60. The restraint was intentional and unlawful and was against Plaintiff's will.

61. As a result, Plaintiff was confined in police custody.

62. Plaintiff suffered embarrassment, humiliation, emotional distress, and slander of her name and in that she was arrested and placed in confinement for no legal cause.

63. As a direct and proximate result, Plaintiff is entitled to recover actual damages, punitive damages, and the costs of this action.

WHEREFORE, the Plaintiff prays:

- a) For judgment against the Defendants awarding the Plaintiff actual compensatory damages;
- b) For judgment against the Defendants awarding the Plaintiff punitive damages;
- c) For judgment against the Defendants awarding the Plaintiff attorneys' fees;
- d) For judgment against the Defendants awarding the Plaintiff the costs of this action; and
- e) For such other and further relief as the Court may deem just and proper.

[signatures next page]

Respectfully submitted,

/s/ Taylor Smith

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ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
May 24, 2018

/s/ M. Brooks Derrick

M. Brooks Derrick (S.C. Bar No. 76330)
LAW OFFICE OF
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ATTORNEY FOR PLAINTIFF

Minutes of the
Simpsonville City Council
Business Meeting
February 9, 2016
6:30 p.m.

City Council Chambers – 118 N.E. Main Street

CALL TO ORDER – Mayor Curtis

COUNCIL PRESENT – Councilmember Gooch, Councilmember Graham, Councilmember Hulehan, Councilmember Braswell, Councilmember Cummings, Councilmember Lockaby, Mayor Curtis

PLEDGE OF ALLEGIANCE

PUBLIC HEARING – Greenville County Redevelopment Authority 2016 Program Year Annual Action Plan

APPROVAL OF MINUTES

- Motion by Councilmember Lockaby with a 2nd by Councilmember Gooch to approve minutes from January 12, 2016 and January 26, 2016. Motion carried unanimously.

SPECIAL RECOGNITION – Coach Greg Porter, 2015 SC Football Coach of the Year

CITIZEN COMMENTS - None

COUNCIL COMMENTS

- Hillcrest High School Scholastic Achievements – Councilmember Graham
- Hillcrest High School Athletic Achievements – Councilmember Graham
- Budget Comments – Councilmember Gooch
- Update on the Grandview and Davenport Intersection – Councilmember Gooch
- Motion by Councilmember Graham with a 2nd by Councilmember Lockaby to appeal Council Comments to allow further comments on non-voting items. Roll call vote taken, Yes=2, No=5. Councilmembers Gooch, Hulehan, Braswell, Cummings and Mayor Curtis voting No. Motion failed.

BUSINESS

a. *Matters Referred by the Planning Commission*

- Motion by Councilmember Graham with a 2nd by Councilmembers Cummings and Braswell pass 2nd Reading of AXZ-2016-02, Proposed Annexation at 700 Fairview Road. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmembers Gooch and Braswell to pass 1st Reading of TX-2016-01, Electronic Message Display Signs in the R-OI District. Motion carried unanimously.
- SP-2016-03, Harrison Bridge Center ID, Major Change, Withdrawn.

b. *Other Business*

- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings to pass Resolution 2016-01, GCRA Annual Action Plan. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to pass Resolution 2016-02, Safety Policy. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to appoint Stephanie Kelley to the Election Commission. Motion passed unanimously.
- Motion by Councilmember Lockaby with a 2nd by Councilmember Graham to accept the bid for Wetlands Remediation from Apex Companies. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to accept the Mutual Aid Agreements as written. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings giving City Administrator, David Dyrhaug permission for completing application with GLDTC for curb replacement at Aster Drive.
- On written request from Councilmember Lockaby:
 Councilmember Lockaby was recognized by Mayor Curtis and had the floor.
 Councilmember Lockaby: Are we opening a can of worms? Cause if we fix this...
 Mayor Curtis: Who are you talking to?
 Councilmember Lockaby: I'm looking at Mr. Dryhaug.
 Mayor Curtis: Well you didn't identify anyone...excuse me.
 Councilmember Lockaby: Mr. Dryhaug, I'm looking straight at you. Are we opening a can of worms when we do this? I'm just asking the question.
 Mr. Dyrhaug: I don't have an answer for that, but I...
 Councilmember Lockaby: Well.
 Mr. Dyrhaug: The issue is that so when this road was resurfaced that the reveal on the curb was diminished and that's caused an issue of storm water coming from the road onto private properties.
 Councilmember Lockaby: And we have storm water issues all over the city.
 Mayor Curtis: [Not intelligible]
 Councilmember Lockaby: I'm still speaking, please.
 Mayor Curtis: Yes, but you're arguing the point and this isn't a time for argument. You can ask questions, but this isn't argument.
 Councilmember Lockaby: I'm not arguing. I'm, I'm stating a fact that we have storm water issues all over the city. Is this opening a can of worms?
 Mayor Curtis: Well, ask our attorney.
 Councilmember Lockaby: I was asking Mr. Dryhaug, I haven't even gotten to the attorney yet.
 Mayor Curtis: Well, okay, that's fine. Mr. Holmes, could you...
 Councilmember Lockaby: I'm not finished.
 Mayor Curtis: You are now. [Gavels] Thank you. Mr. Holmes...
 Councilmember Lockaby: I am not.
 Mayor Curtis: Yes, you are. Mr. Holmes, could you...
 Councilmember Lockaby: [talks over, not intelligible] ...we had to do...
 Mayor Curtis: [Gavels 3 times] Order. Order. Order.
 Councilmember Lockaby: You going to throw me out?
 Mayor Curtis: [Gavels] Order.
 Councilmember Lockaby: You going to threaten to throw me out?
 Mayor Curtis: Keep it up and you'll find out.
 Councilmember Lockaby: I guess I will.
 Mayor Curtis: Okay.

Councilmember Lockaby: I'm keeping it up.

Mayor Curtis: [Gavels] Mr. Holmes will you please answer her question? Thank you.

Councilmember Lockaby: I know if you want to answer her question, I haven't asked one.

Mayor Curtis: Can I get the police officer from the back to enter the front, please?

Officer: Need her out?

Mayor Curtis: I need her out.

Officer: Councilmember Lockaby, will you come with me, please?

Mayor Curtis: We'll take a five minute recess. [Gavels.]

Councilmember Lockaby leaves the council chamber at 7:30pm.

Brief recess until 7:33pm when meeting resumed.

- Motion by Councilmember Gooch to withdraw original motion, 2nd by Councilmember Cummings. Motion to withdraw passes by vote of Yes=6, No=0. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to enter into agreement with Seating Solutions and TRZ Management for Amphitheater Chairs. Motion passed with vote of Yes = 5, No = 1. Councilmember Gooch voting No.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to accept the Budget Workshop Dates presented by City Administrator, David Dyrhaug. Motion passed with vote of Yes = 6, No = 0.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to pass 1st Reading of Ordinance, 2016-01, Timing of Taking Office. Motion passed with vote of Yes = 6, No =0.
- Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to move the Council Rules of Procedure item back to the next workshop session for further discussion. Motion passed with vote of Yes = 6, No = 0.
- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to change the Qualifications for Serving on Boards and Commissions adding that you must be a registered voter. Motion by Councilmember Gooch to withdraw the motion, 2nd by Councilmember Hulehan. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to have (4) four Orientation/Training sessions this year for council inviting MASC and ACOG to conduct the training. Vote taken, Yes=2, No=4. Councilmembers Gooch, Hulehan, Cummings and Mayor Curtis voting No. Motion failed.

EXECUTIVE SESSION

- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to go into Executive Session for the receipt of legal advice on matters covered by the attorney-client privilege and pertaining to contractual arrangements. Motion carried with vote Yes = 6, No = 0.
- Motion by Councilmember Graham with a 2nd by Councilmembers Cummings and Hulehan to return from Executive Session – No action taken, no vote taken.

ADJOURNMENT

- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to adjourn. Motion carried with vote of Yes =6, No = 0.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Sylvia Lockaby,

Plaintiff,

v.

City of Simpsonville, Janice Curtis, and
Adam Randolph,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-23-00731

**NOTICE OF FILING OF AFFIDAVIT OF
ADAM RANDOLPH**

Pursuant to Rule 6(d), SCRPC, Defendants hereby submit the attached Affidavit of Adam Randolph in further support of their Motion for Summary Judgment.

Respectfully submitted,

By: s/ Sarah P. Spruill
Sarah P. Spruill, SC Bar #68337
Boyd B. Nicholson, Jr., SC Bar #65387

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Attorneys for Defendants

April 23, 2019
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Sylvia Lockaby,

Plaintiff,

v.

City of Simpsonville, Janice Curtis, and
Adam Randolph,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-23-00731

PERSONALLY appeared before me Adam Randolph, who, being duly sworn, deposes and says:

1. I am over the age of 18, am competent to testify to these matters, and make this affidavit on personal knowledge.
2. My name is Adam Randolph, and I am a sergeant with the Police Department for the City of Simpsonville ("Department"). I have worked for the Department since January 2012.
3. On the night of February 9, 2016, I was serving as sergeant-at-arms for a meeting of the Simpsonville City Council.
4. I have reviewed the minutes of the City Council meeting and confirm that the transcript of the meeting in the minutes is consistent with my memory.
5. At the time the recording stopped, I believe I was in the front of the Council Chamber near the Councilmembers. As I recall, Councilmember Lockaby said something to the effect of "That's fine. I was leaving anyway."
6. Councilmember Lockaby then gathered her things, got up, and left voluntarily accompanied by her husband.
7. I followed behind them as they left the Council Chambers and went down the stairs to the rear exit of City Hall. I then watched as the Lockabys exited the building.
8. At that time, I returned to my post in Council Chambers.
9. At no time during these events did I touch or arrest Councilmember Lockaby.

FURTHER AFFIANT SAYETH NAUGHT.

Adam K. Randolph 4/1/334
Adam Randolph

SWORN to before me this 12
day of April, 2019.

Ja A O'Connell III
Notary Public of South Carolina
My Commission expires JUNE 15, 2020.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Sylvia Lockaby,

Plaintiff,

v.

City of Simpsonville, Janice Curtis, and Adam
Randolph,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-23-00731

MEMORANDUM IN SUPPORT OF DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

Defendants submit this memorandum in further support of their motion for summary judgment. As shown in the motion, the previously submitted affidavits of Phyllis Long and Adam Randolph, and below, there is no genuine issue for trial in this matter.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56, SCRC. “Summary judgment is appropriate in those cases where plain, palpable, and undisputable facts exist on which reasonable minds cannot differ.” *Main v. Corley*, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984).

The Court must view the facts and inferences in the light most favorable to the nonmoving party. *See Thomas v. Waters*, 315 S.C. 524, 527, 445 S.E.2d 659, 661 (Ct. App. 1994). When the nonmoving party bears the burden of proof as to an issue, a party seeking summary judgment may meet this standard by pointing out to the trial court “that there is an absence of evidence to support the nonmoving party’s case.” *Richardson v. State-Record Co.*, 330 S.C. 562, 566, 499 S.E.2d 822, 825 (Ct. App. 1998). “[I]n cases applying the preponderance

of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). A scintilla of evidence is material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror. *Gibson v. Epting*, No. 2016-000432, 2019 WL 138187, at *3 (Ct. App. Jan. 9, 2019). “[A] scintilla is a perceptible amount. There still must be a verifiable spark, not something conjured by shadows.” *Id.* A nonmoving party cannot evade summary judgment by creating and relying on “an inference that is not reasonable or an issue of fact that is not genuine.” *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

If a motion has been properly made and supported in accordance with Rule 56, the non-moving party may not rest on its pleadings but must come forward with specific facts showing that there is a genuine issue for trial. Rule 56(e), SCRCP; *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 580, 602 S.E.2d 389, 392 (2004). This showing must be based on evidence that would be admissible at trial. *Hall v. Fedor*, 349 S.C. 169, 175, 561 S.E.2d 654, 657 (Ct. App. 2002).

UNDISPUTED FACTS

Sylvia Lockaby is a former member of the City Council (“Council”) for the City of Simpsonville (“City”). All of the facts underlying her Complaint occurred at the February 9, 2016 Council meeting.¹

I. Conduct of City Council Meetings.

Council meetings are controlled by the Simpsonville Code of Ordinances (“Code”) and Robert’s Rules of Order (“Robert’s Rules”).² Lockaby has agreed that the November 24, 2015

¹ The approved minutes of that meeting are attached as Exhibit 1. The veracity of the minutes of that meeting are not in dispute and have been confirmed by the Plaintiff to the extent she was present. Lockaby Dep. at 20:25-21:13, excerpted at Exhibit 2.

revision of the Code is the version applicable to the February 9, 2016 Council meeting.³ As of February 9, 2016, the latest edition of “Robert’s Rules of Order, Newly Revised” was the 11th edition.⁴

At the time of the meeting, Janice Curtis (“Curtis” or the “Mayor”) served as Mayor of the City, and Lockaby was a member of Council.⁵ As Mayor, Curtis presided over Council meetings.⁶ Adam Randolph, an officer of the City’s Police Department, was also present at the meeting and functioned as the sergeant-at-arms.⁷ As set forth in the Code,

Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the presiding officer, it shall be the duty of such law enforcement officer to remove from the city council meeting any person who is disturbing the proceedings of the city council.⁸

II. The February 9, 2016 City Council Meeting.

This lawsuit arises out of a debate between Lockaby and Curtis during the February 9, 2016 Council meeting, which took place in the Council Chambers in City Hall. The exact exchange immediately prior to Lockaby’s exit from the meeting appears in the Minutes as follows:

Mayor Curtis: [Gavels 3 times] Order. Order. Order.

Councilmember Lockaby: You going to throw me out?

² Code at 2-63, excerpted at Exhibit 3 (“[e]xcept as otherwise required by state law or ordinance, all proceedings of council shall be governed by the latest edition of ‘Robert’s Rules of Order, Newly Revised[.]’”); Ex. 2 at 12:17-13:3.

³ Ex. 2 at 11:5-13; *see also* Long Aff. at ¶ 4, attached as Exhibit 4.

⁴ Ex. 4 at ¶ 6.

⁵ *See* Ex. 1 for listing of Councilmembers in attendance.

⁶ Ex. 2 at 13:9-11; Ex. 3 at §§ 2-34, -63.

⁷ Ex. 2 at 29:13-17; Ex. 3 at § 2-67(b)).

⁸ Ex. 3 at § 2-67(b).

Mayor Curtis: [Gavels] Order.

Councilmember Lockaby You going to threaten to throw me out?

Mayor Curtis: Keep it up and you'll find out.

Councilmember Lockaby: I guess I will.

Mayor Curtis: Okay.

Councilmember Lockaby: I'm keeping it up.

Mayor Curtis: [Gavels] Mr. Holmes will you please answer her question? Thank you.

Councilmember Lockaby: I know if you want to answer her question, I haven't asked one.

Mayor Curtis: Can I get the police officer from the back to enter the front, please?

Officer: Need her out?

Mayor Curtis: I need her out.

Officer: Councilmember Lockaby, will you come with me, please?

Mayor Curtis: We'll take a five minute recess. [Gavels.]

Councilmember Lockaby leaves the council chamber at 7:30pm.⁹

Lockaby did not challenge any ruling from the presiding officer, although she acknowledged in her deposition that a member of Council could challenge or appeal a ruling from the presiding officer.¹⁰

The audio recording was paused when the Mayor gaveled the recess.¹¹ With respect to what happened between the transcript portion of the Minutes and when Lockaby left City Hall, the witnesses provided the following testimony:

1. Phyllis Long, City Clerk

Q. Did she say anything else to council?

A. No.

Q. Did anybody on council say anything to her?

A. No.

⁹ Ex. 1.

¹⁰ Ex. 2 at 26:17-18, 17:8-15; Ex. 1.

¹¹ Long Dep. at 16:25-17:2, excerpted at Exhibit 5.

Q. Okay. Was -- to your recollection, was Council Member Lockaby arrested?

A. Oh, no, she was not.

Q. Did Adam Randolph or anyone else touch Council Member Lockaby?

A. No.

Q. Would you remember, if that had happened?

A. Yes, ma'am.¹²

Q. And did you hear Council Member Lockaby say anything, as she was leaving the room that night?

A. She did say something. Best of my knowledge, it was something like, "I'm leaving anyway."

Q. Okay. And what was that in response to?

A. Because the mayor had asked the sergeant-of-arms to come forward to the front of the council chambers, and he was standing on the left-hand side of the chamber, and she was on the right, and --

Q. "She," Council Member Lockaby?

A. I'm sorry. Council Member Lockaby was on the right, coming down from the dais where her seat is. And she crossed in front of the dais toward the sergeant-of-arms and said, "I'm leaving anyway."

Q. Okay. And how did you observe council member Lockaby to leave the meeting?

A. How did I observe her? I'm not sure I understood.

Q. Sure. Did she -- was she rushing out of the room?

A. Oh, no, she gathered her things and walked out, took her husband with her.

Q. Okay. And would you characterize her actions, as she left, as voluntary or involuntary?

A. Voluntary.¹³

2. Adam Randolph

5. At the time the recording stopped, I believe I was in the front of the Council Chamber near the Councilmembers. As I recall, Councilmember Lockaby said something to the effect of "That's fine. I was leaving anyway."

6. Councilmember Lockaby then gathered her things, got up, and left voluntarily accompanied by her husband.

¹² Ex. 5 at 17:9-21.

¹³ Ex. 5 at 18:20-19:22.

7. I followed behind them as they left the Council Chambers and went down the stairs to the rear exit of City Hall. I then watched as the Lockabys exited the building.

8. At that time, I returned to my post in Council Chambers.

9. At no time during these events did I touch or arrest Councilmember Lockaby.¹⁴

3. Sylvia Lockaby

A. I asked her if she was gonna throw me out like she just did Mr. Graham. She said if you keep on, I will; and I said, I'm keeping on, because I still had the floor, and about that time is when she called Mr. Randolph up.

Q Okay. What happened then?

A He said, do you need her out? She says, I need her out; so I gathered my stuff and I walked out.

Q Did you say anything else before you walked out?

A I don't believe I did.

Q Did you walk out by yourself?

A My husband was there with me.

[. . .]

Q Did you appeal the ruling from the mayor?

A No.

Q Did Officer Randolph, or anyone else, touch you?

A No, ma'am.

Q Were you, in any way, detained?

A I don't know what you mean by, detained. I was with an officer, for a few minutes there, while I was escorted out of the building.

Q Who was that?

A Officer Randolph.

Q Did he ever leave the council chambers?

A He walked out with me to make sure I got out of the building.

Q Are you sure about that?

A Yes.

Q Did he leave the building?

A He walked me outside of the door -- to the best of my knowledge, he walked me outside of the door, and then my husband and I went and got in the car.

Q Did anyone tell you what to do after you left the council chambers?

¹⁴ Randolph Aff. at ¶¶ 5-9, attached as Exhibit 6.

A No, they did not. There was nobody out there but me and my husband.

Q Did Officer Randolph say anything to you?

A I don't think he did.

Q Other than the language in the minutes, the transcript in the minutes, did anyone tell you that you needed to go anywhere specific, or needed to do anything specific?

A No.¹⁵

Q Will you look for me at paragraph 25, on page four, and it says there that you were, "Seized and escorted away from the council chambers in the custody of Defendants Randolph and Simpsonville." Can you tell me, based on your memory of that night, what that means?

A I was escorted out.

Q But you mentioned earlier that no one touched you.

A He did not touch me; he escorted me out.

Q Okay. Do you believe that Officer Randolph was doing anything other than acting as the sergeant-at-arms for the meeting, at the direction of the mayor?

A That's exactly what he was doing.

Q Do you believe Mayor Curtis was doing anything other than acting as the presiding officer of the meeting?

A Yes.

Q Okay. Tell me about that.

A I believe she was. I believe she was being vindictive.

Q Okay. But you do agree, she was the presiding officer of the meeting at the time?

A Yes.

Q And as the presiding officer, she would perform all those functions of the chair, from Robert's rules?

A Yes. Or the code of conduct, whatever it was.

Q Okay. How do you contend you were unlawfully detained?

A I was escorted out of the meeting; I was not allowed to stay in the meeting; I was not allowed to represent my ward or the rest of the city.

Q Because of the direction given by the presiding officer at the meeting?

A Yes.

Q How were you arrested?

A I think you've already asked me, and I've answered this. He escorted me out of the building. I'm sure if I had not gone willingly, then I would have been physically escorted out.

¹⁵ Ex. 2 at 25:22-27:23.

Q But that didn't happen?
A He did not touch me.¹⁶

Although there is some variation in the testimony, the important details are consistent across all witnesses: Lockaby did not challenge the ruling; she left the meeting voluntarily; no one touched her or otherwise detained her; and she was not given any instruction about where to go or what she could say after she left the meeting. Lockaby does not make any allegations other than with respect to this meeting.¹⁷

ARGUMENT

With respect to the matters reflected in the Minutes, the Minutes are the only admissible evidence.

A town council has the express duty to keep minutes of its proceedings which shall be a public record. S.C. Code Ann. § 5-7-250(b) (1976). Municipal records properly authenticated or verified are the only competent evidence of the proceedings of the transactions of the governing body. 5 E. McQuillan, *The Law of Municipal Corporations* § 14.05 (3d ed. 1989). Parol evidence cannot be admitted to explain, enlarge, or contradict minutes of the proceeding of a town council unless the minutes are incomplete or ambiguous. *Id.* § 14.07. Otherwise, parol evidence could render official minutes uncertain and unreliable so that the minutes would fail to afford dependable evidence of the proceedings of the municipal body. *Id.*

Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992). As set forth above, there is no contention that the Minutes are inaccurate as to what is reflected there.

Lockaby has conceded that there cannot be an effective city council meeting without rules.¹⁸ The Defendants seek summary judgment to the end that a Council meeting must be

¹⁶ Ex. 2 at 29:3-30:23.

¹⁷ Ex. 2 at 28:12-28:16 (“And other than the portion of the minutes with that transcript in it, at this council meeting, do you contend anyone from the city has prevented you from speaking as you wished? A Other than this, no.”).

¹⁸ Ex. 2 at 15:22-24.

allowed to proceed according to its rules and procedures without fear of later civil liability. With respect to all of the arguments raised, it does not matter whether the Mayor was correct in her rulings as presiding officer. The procedures in place and the doctrine of legislative immunity contemplate that no presiding officer is perfect. For all of the reasons set forth below, summary judgment should be granted.

I. Lockaby failed to avail herself of the remedy provided in Robert’s Rules.

As set forth above, Council meetings are subject to the Code, and the Code provides in § 2-63 that Council meetings are governed by Robert’s Rules. This is consistent with S.C. Code Ann. § 5-7-250(b) (“The council shall determine its own rules and order of business and shall provide for keeping minutes of its proceedings which shall be a public record.”).

Under § 24 of Robert’s Rules, any ruling by the presiding officer may be appealed. Under that same rule, “[m]embers have no right to criticize a ruling of the chair unless they appeal from his decision.” The appeal provision is in place to give the Council as a whole the opportunity to correct any ruling made by the presiding officer immediately after it is made. There is no mechanism that allows a member of Council to revisit actions in meetings after the fact.

Lockaby did not appeal the ruling at issue in this case, and therefore her claims are barred for failure to exhaust internal remedies. As set forth by the South Carolina Supreme Court,

The general rule is that administrative remedies must be exhausted absent circumstances excusing application of the general rule. *Hyde v. S.C. Dep’t of Mental Health*, 314 S.C. 207, 442 S.E.2d 582 (1994); *Andrews Bearing Corp. v. Brady*, 261 S.C. 533, 201 S.E.2d 241 (1973). “A general exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that a pursuit of them would be a vain or futile act.” *Moore v. Sumter County Council*, 300 S.C. 270, 273–74, 387 S.E.2d 455, 458 (1990) (citing 82 Am.Jur.2d *Zoning and Planning* § 332 at 903 (1976)). Futility, however, must be demonstrated by a showing comparable to the administrative agency taking “a hard and fast position that makes an adverse ruling a

certainty.” *Thetford Properties IV Ltd. P’ship v. U.S. Dep’t of Hous. and Urban Dev.*, 907 F.2d 445, 450 (4th Cir.1990).

The question of whether to require the plaintiff to exhaust administrative remedies is a matter within the sound discretion of the trial judge. *Andrews Bearing Corp.*, 261 S.C. at 536, 201 S.E.2d at 243. A matter within the sound discretion of the trial judge will not be disturbed on appeal absent an abuse of discretion. *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990). “An abuse of discretion occurs where the trial judge was controlled by an error of law or where his order is based on factual conclusions that are without evidentiary support.” *Id.*

Law v. S.C. Dep’t of Corr., 368 S.C. 424, 438, 629 S.E.2d 642, 650 (2006). No evidence has been adduced and Lockaby has not alleged that any such appeal would have been futile.

Here, this Court stands in a position to take a firm line that municipal bodies may make their own rules regarding meetings and all members must abide by any provisions of those rules relating to appeals of rulings by the chair. The place to resolve these disputes is in the Council Chambers, not years later in a courtroom. These considerations are applicable regardless of whether the Mayor’s ruling was correct. If Lockaby believed the Mayor’s ruling was in error, she was free to challenge it at the meeting.

This is similar to the rule that members of a legislative body that are unhappy with the decision of a governmental entity lack standing to seek recourse in the courts. *Newman v. Richland Cnty. Historic Pres. Comm’n*, 325 S.C. 79, 82-84, 480 S.E.2d 72, 74–75 (1997). As set forth there,

The proper analogy is not to a corporation and its directors, but to a legislative body and its members. **We have been unable to find any case which permits a disappointed legislator to attack a decision of her own body, either through a declaratory judgment or through a direct “appeal” of the decision.**

Id. (emphasis added).

South Carolina courts are not in the business of second-guessing activity at city council meetings, and the Court should refrain from doing so in this case. Lockaby did not appeal the

ruling at issue here; as a result, the Court should exercise its discretion and find that the failure to exhaust her remedy in the meeting bars Lockaby's claims in this case.

II. Lockaby's claims are barred by legislative immunity.

The actions in question here are limited to one Council meeting, and specifically, one ruling by the Mayor as presiding officer and the actions of Randolph who was serving as sergeant-at-arms at the instruction of the presiding officer. As such, the actions at issue are subject to absolute legislative immunity and do not give rise to liability under 42 U.S.C. § 1983 or the South Carolina Tort Claims Act ("Act"). Lockaby contested these arguments at the motion to dismiss stage by relying on the allegations of her Amended Complaint relating to an "arrest" and "detention." As set forth above, these allegations have not been borne out by the evidence. There was not an arrest; there was no detention. Lockaby simply accepted the presiding officer's ruling without challenge and voluntarily left the meeting.

A. The Fourth Circuit has found that disciplinary actions taken by a local legislative body against a member of that body are part of the legislative process and are subject to legislative immunity.

Local legislative bodies are clothed with absolute immunity for their legislative actions. *Bruce v. Riddle*, 631 F.2d 272, 279 (4th Cir. 1980); *see also Bogan v. Scott-Harris*, 523 U.S. 44, 52 (1998) (upholding absolute immunity for local legislators under § 1983). "Absolute legislative immunity attaches to all actions taken in the sphere of legitimate legislative activity." *Bogan*, 523 U.S. at 54 (internal quotation marks omitted).

The Fourth Circuit has found this general rule applies to disciplinary action taken by a local legislative body against one of its members. *Whitener v. McWatters*, 112 F.3d 740, 741 (4th Cir. 1997). In that case, Whitener, a county supervisor, was disappointed with the outcome of a "straw vote" relating to committee assignments. *Id.* Following the vote, Whitener confronted several other supervisors. *Id.* When those supervisors complained, the board voted

to censure Whitener and to strip him of his committee assignments for a year. *Id.* Whitener brought action under 42 U.S.C. § 1983. *Id.* The Fourth Circuit affirmed the dismissal of Whitener’s complaint because the board’s actions “were protected by absolute legislative immunity.” *Id.* at 745. As stated in the opening paragraph of *Whitener*, “[b]ecause we hold that a legislative body’s discipline of one of its members is a core legislative act, we affirm.” *Id.* at 741.

The facts of this case are not as extreme as those in *Whitener*. Lockaby was not stripped of any committee assignments, nor was there any other repercussion of the events at this meeting with respect to her service on Council. The same rules, however, would still apply. It stands to reason that less egregious conduct would be subject to the same immunity applied in *Whitener*. It is absurd to suggest that there is no immunity because the alleged conduct in this case was not as severe.

In reaching this result, the *Whitener* court traced the idea of immunity from the common law forward to the ratification of the United States Constitution, and reasoned,

Thus, Americans at the founding and after understood the power to punish members as a legislative power inherent even in “the humblest assembly of men.” This power, rather than the power to exclude those elected, is the primary power by which legislative bodies preserve their “institutional integrity” without compromising the principle that citizens may choose their representatives. Further, because citizens may not sue legislators for their legislative acts, legislative bodies are left to police their own members. Absent truly exceptional circumstances, it would be strange to hold that such self-policing is itself actionable in a court.

This history and long practice confirm that the disciplinary action taken by the [Defendant] against one of its members was legislative in nature. And [Plaintiff’s] own contentions confirm that his conduct was legislative. He alleges that he harbored an unpopular voting position on the Board; that he expressed his position using abusive language; and that the Board disciplined him for it. While he was arguably disciplined for speech, it was legislative speech, which is protected from executive or, in the United States, judicial interference, but not from the legislative body’s judgment. As legislative speech and voting is

protected by absolute immunity, the exercise of self-disciplinary power is likewise protected.

Id. at 744 (internal citations omitted). Quite simply, “legislatures may discipline members for speech with the corollary immunity from executive or judicial reprisal for doing so.” *Id.* Under this authority, Lockaby’s claim under 42 U.S.C. § 1983 cannot stand. Again, legislative bodies must be free to conduct meetings according to their rules and procedures without fear of civil liability.

B. The actions in question are also subject to legislative immunity under the Act and the law of South Carolina.

The Act “is the exclusive civil remedy available for any tort committed by a government entity, its employees, or its agents except as provided in § 15–78–70(b).” *Wells v. City of Lynchburg*, 331 S.C. 296, 302, 501 S.E.2d 746, 749 (Ct. App. 1998); *see* S.C. Code Ann. § 15–78–200 (2005) (“Notwithstanding any provision of law, this chapter, the ‘South Carolina Tort Claims Act’, is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee’s official duty.”). Thus, if there is immunity under the Act, Lockaby has not stated any tort claims against the City.

The Act extends immunity to “legislative, judicial, or quasi-judicial action or inaction.” S.C. Code Ann. § 15-78-60(1). In addition, South Carolina courts recognize common law legislative immunity. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 637, 743 S.E.2d 808, 815 (2013) (“the Board’s entitlement to immunity is supported by common law that interprets and applies principles of legislative immunity, a doctrine that has not been supplanted by the [Act].”; *Richardson v. McGill*, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979) (“A sound public policy has long recognized an absolute immunity of members of legislative bodies for acts in the performance of their duties.”).

Here, Lockaby's claims stem from the conduct of a Council meeting at which Curtis was serving as presiding officer, Lockaby was present as member of Council, and Randolph was serving as sergeant-at-arms. Following the ruling from the Mayor, Lockaby voluntarily left the meeting. No one touched her. No one detained her. These facts reflect solely legislative action. As stated by the South Carolina Attorney General's Office,

[I]t appears the power of a legislative body to discipline one of its members would be considered an inherent "legislative power." And, as we have expressed in prior opinions of this Office, these legislative powers are applicable to local legislative bodies such as a municipal council. Accordingly, as a legislative body, we believe it is likely a court would find a municipal council has the authority to discipline one of its members as an inherent legislative power. It follows that this inherent authority could include removal of a member from a council meeting.

2016 WL 3355910, at *3 (S.C.A.G. May 31, 2016)(citing *Whitener*, 112 F.3d at 744); *see also* S.C. Code Ann. § 5-7-250(b) (providing city councils may set their own rules and order of business); S.C. Code Ann. § 30-4-70(d) (providing that the South Carolina Freedom of Information Act does not prohibit the removal of persons from meetings).

In light of *Whitener* and similar South Carolina authority, the Defendants' actions relating to Lockaby at the February 9, 2016 Council meeting arise from legislative action and are not actionable under the Act or by operation of common law legislative immunity. Therefore, summary judgment is appropriate at this time.

CONCLUSION

Lockaby had a remedy to the extent she believed she was improperly asked to leave the February 8, 2016 meeting of City Council. She could have challenged the ruling at that time, and if a majority of council had agreed, she would have been permitted to stay at the meeting. The matter would have been resolved internally and in real time. Instead, Lockaby waited years after the fact and has attempted to challenge that ruling in this Court. Moreover, because the ruling Lockaby complains of occurred entirely within the context of a council meeting, the action

taken is subject to legislative immunity. For these reasons, the Court should grant the Defendants' motion for summary judgment.

Respectfully submitted,

By: s/ Sarah P. Spruill
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April 24, 2019

EXHIBIT 1

**Minutes of the
Simpsonville City Council
Business Meeting
February 9, 2016
6:30 p.m.
City Council Chambers – 118 N.E. Main Street**

CALL TO ORDER – Mayor Curtis

COUNCIL PRESENT – Councilmember Gooch, Councilmember Graham, Councilmember Hulehan, Councilmember Braswell, Councilmember Cummings, Councilmember Lockaby, Mayor Curtis

PLEDGE OF ALLEGIANCE

PUBLIC HEARING – Greenville County Redevelopment Authority 2016 Program Year Annual Action Plan

APPROVAL OF MINUTES

- Motion by Councilmember Lockaby with a 2nd by Councilmember Gooch to approve minutes from January 12, 2016 and January 26, 2016. Motion carried unanimously.

SPECIAL RECOGNITION – Coach Greg Porter, 2015 SC Football Coach of the Year

CITIZEN COMMENTS - None

COUNCIL COMMENTS

- Hillcrest High School Scholastic Achievements – Councilmember Graham
- Hillcrest High School Athletic Achievements – Councilmember Graham
- Budget Comments – Councilmember Gooch
- Update on the Grandview and Davenport Intersection – Councilmember Gooch
- Motion by Councilmember Graham with a 2nd by Councilmember Lockaby to appeal Council Comments to allow further comments on non-voting items. Roll call vote taken, Yes=2, No=5. Councilmembers Gooch, Hulehan, Braswell, Cummings and Mayor Curtis voting No. Motion failed.

BUSINESS

a. *Matters Referred by the Planning Commission*

- Motion by Councilmember Graham with at 2nd by Councilmembers Cummings and Braswell pass 2nd Reading of AXZ-2016-02, Proposed Annexation at 700 Fairview Road. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmembers Gooch and Braswell to pass 1st Reading of TX-2016-01, Electronic Message Display Signs in the R-OI District. Motion carried unanimously.
- SP-2016-03, Harrison Bridge Center ID, Major Change, Withdrawn.

b. *Other Business*

- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings to pass Resolution 2016-01, GCRA Annual Action Plan. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to pass Resolution 2016-02, Safety Policy. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to appoint Stephanie Kelley to the Election Commission. Motion passed unanimously.
- Motion by Councilmember Lockaby with a 2nd by Councilmember Graham to accept the bid for Wetlands Remediation from Apex Companies. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to accept the Mutual Aid Agreements as written. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings giving City Administrator, David Dyrhaug permission for completing application with GLDTC for curb replacement at Aster Drive.
- On written request from Councilmember Lockaby:

Councilmember Lockaby was recognized by Mayor Curtis and had the floor.
 Councilmember Lockaby: Are we opening a can of worms? Cause if we fix this...
 Mayor Curtis: Who are you talking to?
 Councilmember Lockaby: I'm looking at Mr. Dryhaug.
 Mayor Curtis: Well you didn't identify anyone...excuse me.
 Councilmember Lockaby: Mr. Dryhaug, I'm looking straight at you. Are we opening a can of worms when we do this? I'm just asking the question.
 Mr. Dyrhaug: I don't have an answer for that, but I...
 Councilmember Lockaby: Well.
 Mr. Dyrhaug: The issue is that so when this road was resurfaced that the reveal on the curb was diminished and that's caused an issue of storm water coming from the road onto private properties.
 Councilmember Lockaby: And we have storm water issues all over the city.
 Mayor Curtis: [Not intelligible]
 Councilmember Lockaby: I'm still speaking, please.
 Mayor Curtis: Yes, but you're arguing the point and this isn't a time for argument. You can ask questions, but this isn't argument.
 Councilmember Lockaby: I'm not arguing. I'm, I'm stating a fact that we have storm water issues all over the city. Is this opening a can of worms?
 Mayor Curtis: Well, ask our attorney.
 Councilmember Lockaby: I was asking Mr. Dryhaug, I haven't even gotten to the attorney yet.
 Mayor Curtis: Well, okay, that's fine. Mr. Holmes, could you...
 Councilmember Lockaby: I'm not finished.
 Mayor Curtis: You are now. [Gavels] Thank you. Mr. Holmes...
 Councilmember Lockaby: I am not.
 Mayor Curtis: Yes, you are. Mr. Holmes, could you...
 Councilmember Lockaby: [talks over, not intelligible] ...we had to do...
 Mayor Curtis: [Gavels 3 times] Order. Order. Order.
 Councilmember Lockaby: You going to throw me out?
 Mayor Curtis: [Gavels] Order.
 Councilmember Lockaby: You going to threaten to throw me out?
 Mayor Curtis: Keep it up and you'll find out.
 Councilmember Lockaby: I guess I will.
 Mayor Curtis: Okay.

Councilmember Lockaby: I'm keeping it up.

Mayor Curtis: [Gavels] Mr. Holmes will you please answer her question? Thank you.

Councilmember Lockaby: I know if you want to answer her question, I haven't asked one.

Mayor Curtis: Can I get the police officer from the back to enter the front, please?

Officer: Need her out?

Mayor Curtis: I need her out.

Officer: Councilmember Lockaby, will you come with me, please?

Mayor Curtis: We'll take a five minute recess. [Gavels.]

Councilmember Lockaby leaves the council chamber at 7:30pm.

Brief recess until 7:33pm when meeting resumed.

- Motion by Councilmember Gooch to withdraw original motion, 2nd by Councilmember Cummings. Motion to withdraw passes by vote of Yes=6, No=0. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to enter into agreement with Seating Solutions and TRZ Management for Amphitheater Chairs. Motion passed with vote of Yes = 5, No = 1. Councilmember Gooch voting No.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to accept the Budget Workshop Dates presented by City Administrator, David Dyrhaug. Motion passed with vote of Yes = 6 No = 0.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to pass 1st Reading of Ordinance, 2016-01, Timing of Taking Office. Motion passed with vote of Yes = 6, No = 0.
- Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to move the Council Rules of Procedure item back to the next workshop session for further discussion. Motion passed with vote of Yes = 6, No = 0.
- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to change the Qualifications for Serving on Boards and Commissions adding that you must be a registered voter. Motion by Councilmember Gooch to withdraw the motion, 2nd by Councilmember Hulehan. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to have (4) four Orientation/Training sessions this year for council inviting MASC and ACOG to conduct the training. Vote taken, Yes=2, No=4. Councilmembers Gooch, Hulehan, Cummings and Mayor Curtis voting No. Motion failed.

EXECUTIVE SESSION

- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to go into Executive Session for the receipt of legal advice on matters covered by the attorney-client privilege and pertaining to contractual arrangements. Motion carried with vote Yes = 6, No = 0.
- Motion by Councilmember Graham with a 2nd by Councilmembers Cummings and Hulehan to return from Executive Session – No action taken, no vote taken.

ADJOURNMENT

- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to adjourn. Motion carried with vote of Yes =6, No = 0.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS

- - -

Sylvia Lockaby,
Plaintiff,

C.A. NO.:
2018-CP-23-00731

vs.

City of Simpsonville, Janice
Curtis, Adam Randolph,
Defendants.

DEPOSITION OF SYLVIA LOCKABY

DATE TAKEN: Thursday, February 7, 2019

TIME BEGAN: 2:06 p.m.

TIME ENDED: 3:00 p.m.

LOCATION: Haynsworth Sinkler Boyd, PA
One North Main Street, Second Floor
Greenville, South Carolina 29601

REPORTED BY: Lisa Garson, Court Reporter

EVERYWORD, INC.

P.O. Box 1459

Columbia, South Carolina 29202

803-212-0012

1 (Lockaby Exhibit 1, Code of Ordinances,
2 City of Simpsonville, South Carolina, marked
3 for identification.)

4 BY MS. SPRUILL:

5 Q I will tell you upfront that this is an
6 excerpt from the City of Simpsonville Code of
7 Ordinances; and you'll see there, if you flip to
8 the second page, there's an Article II, which is
9 titled, "Council;" and my question to you is, are
10 these the portions of the city code of ordinances
11 that applied to city council meetings, at the time,
12 in February 2016?

13 A To the best of my knowledge, yes.

14 Q And you said there are rules now.

15 A I haven't read these. The only thing I'm
16 going by is the November '15 date; so I don't know
17 if this is the actual rules, but that's the best of
18 my knowledge.

19 Q And you're welcome to take a look at
20 them, and then I'll ask you questions about some
21 specific provisions, as we go along.

22 You said, There are now. What did you
23 mean by that?

24 A After the incident that we're here about,
25 the council rules were put into place.

1 Q And by that do you mean that the code of
2 ordinances was amended?

3 A I don't know. Was it amended or just
4 added to?

5 MR. RADEKER: Can we go off the record?

6 - - -

7 (Off the record.)

8 - - -

9 WITNESS: I don't know, never mind. I
10 don't know if it was amended, or added to; I
11 don't know.

12 BY MS. SPRUILL:

13 Q Okay. But your response is indicating
14 that some changes were made to the procedures that
15 applied to council meetings after February of 2016.

16 A Yes, ma'am.

17 Q And if you would look, for me, at Section
18 2-63 in that exhibit, on the fifth page.

19 You'll see there that it says, "Except as
20 otherwise required by state law or ordinance, all
21 proceedings of council shall be governed by the
22 latest edition of "Robert's Rules of Order, Newly
23 Revised," and the city attorney shall act as
24 parliamentarian."

25 A Yes, ma'am.

1 Q Is that consistent with your recollection
2 of the rules that you followed in council?

3 A Yes.

4 Q And would you agree with me that what
5 Robert's Rules said goes, as far as how a meeting
6 is conducted at Simpsonville City Council, at that
7 time -- or should have?

8 A It should have, yes.

9 Q And who presided at Simpsonville City
10 Council meetings?

11 A The mayor.

12 Q And --

13 A Or mayor pro tem, whoever.

14 Q And would that be in that same exhibit as
15 is set forth right there in section 2-34, which is
16 on the third page of that exhibit?

17 A It's actually set in 63.

18 Q That was gonna be my next question.

19 A Yeah. I don't see it in 34.

20 Q I can help you. It's in the middle of
21 paragraph B there. "He or she shall preside over
22 the meetings of the city council."

23 A Okay.

24 Q And that's consistent with your
25 recollection?

1 Simpsonville City Council meeting?

2 A We followed the agenda. We didn't waiver
3 from the agenda unless we wanted to move things
4 around, and then we voted on it.

5 Q And does the agenda -- as a matter of
6 South Carolina state law, does the agenda govern
7 what you can discuss during a city council meeting?

8 A Yes. Unless we had council comments,
9 which, they did away with those. Council comments,
10 you can talk about anything you wanted to.

11 Q But council couldn't take official action
12 based on those?

13 A Oh, no, no, no.

14 Q Do you know of any mechanism where
15 council can take up matters not on the agenda?

16 A I don't recollect any. It has to be on
17 the agenda, so the public will know.

18 Q That's right. And so the public will
19 know, that's the requirements of the Freedom of
20 Information Act?

21 A Yes.

22 Q Could you have an effective city council
23 meeting without some kind of rules?

24 A I would say not.

25 Q And what role did city staff play at city

1 Q Okay. But those requests for information
2 would have to go through the presiding officer?

3 A You have to be recognized.

4 Q And could you debate city staff?

5 A I don't know; I don't know; I don't know.
6 I don't understand the question -- debating city
7 staff? I don't know why I'd debate them.

8 Q Okay. Fair enough. In your memory,
9 could a council member challenge, or appeal, a
10 ruling from the chair?

11 A Yes, ma'am.

12 Q How does that work?

13 A One of the council members would say, I
14 appeal the ruling from the chair, and they would
15 have a vote.

16 Q And what happened if the vote carried?

17 A Whatever she said, went.

18 Q Did you ever see that happen?

19 A After the incident of February 9th, yes,
20 I did.

21 Q Did you ever do that?

22 A I don't recall.

23 Q And with respect to your answer on the
24 question about if you'd ever seen it done, and you
25 said, after the incident we're here talking about;

1 Q And is that agenda -- there are a lot of
2 items on that agenda.

3 A Yes, there are.

4 Q Would that be, about, an average number
5 of items on an agenda?

6 A That's a little more than usual.

7 Q How long did city council meetings
8 usually take?

9 A Anywhere from 30 minutes to whenever.

10 Q And --

11 A We've had some lengthy executive
12 sessions.

13 Q But that wasn't this meeting. The
14 portion we're about to talk about had not had an
15 executive session, yet; is that correct?

16 A No. The executive session is at the end
17 of the meeting, usually.

18 MS. SPRUILL: Next I'm gonna hand you
19 what the court reporter is gonna mark as
20 Exhibit 3.

21 (Lockaby Exhibit 3, Minutes of the
22 Simpsonville City Council Business Meeting,
23 February 9, 2016, marked for identification.)

24 BY MS. SPRUILL:

25 Q My question to you -- once you've had a

1 second to look at them -- is, are these the minutes
2 from that meeting?

3 A I would imagine they are.

4 Q You're welcome to look at them a little
5 longer.

6 A No. That's all right.

7 Q And my next question to you is, do you
8 agree with what's presented there for the portions
9 of the meeting for which you were present?

10 A Yes, ma'am.

11 Q Do you have any disagreement with the
12 transcript portion of those minutes?

13 A No.

14 Q Did you ask that that transcript be
15 included in the minutes?

16 A I asked for the minutes to be done,
17 verbatim.

18 Q Do you remember how you made that
19 request?

20 A I called Ms. Long, and she said I'd have
21 to do it in writing, so I submitted it in writing.

22 Q Do you remember when that was?

23 A Probably the day after. It was within a
24 day or two of the meeting because I know she does
25 the minutes fairly quickly.

1 A Yeah. The mayor said, You didn't
2 identify anyone -- the mayor interrupts me and I
3 told her, I'm still speaking, please.

4 I still have the floor at that moment.

5 Q Okay.

6 A She says I'm arguing the point, but I'm
7 not; I'm asking him a question, just a plain
8 question, Are we opening a can of worms, and I
9 think we all know what opening a can of worms
10 means -- you're arguing the point but this isn't
11 the time for an argument. You can ask questions,
12 but this is an argument.

13 I wasn't arguing. There was no argument.

14 Q Okay.

15 A That's when she told me to ask the
16 attorney.

17 Q And the attorney is Mr. Holmes?

18 A Yes. I said I was asking Mr. Dyrhaug. I
19 hadn't even gotten to the attorney, yet, and I was
20 gonna move to him, but -- and I reminded her,
21 again, that I had the floor, I wasn't finished.

22 I asked her if she was gonna throw me out
23 like she just did Mr. Graham. She said if you keep
24 on, I will; and I said, I'm keeping on, because I
25 still had the floor, and about that time is when

1 she called Mr. Randolph up.

2 Q Okay. what happened then?

3 A He said, do you need her out? She says,
4 I need her out; so I gathered my stuff and I walked
5 out.

6 Q Did you say anything else before you
7 walked out?

8 A I don't believe I did.

9 Q Did you walk out by yourself?

10 A My husband was there with me.

11 Q Did you appeal the -- oh, I'm so sorry.

12 A I'm thinking about him being there with
13 me.

14 Q Yes, ma'am. Do you need a minute?

15 A No, go ahead. This is not unusual for
16 me. I'm ready when you are.

17 Q Did you appeal the ruling from the mayor?

18 A No.

19 Q Did officer Randolph, or anyone else,
20 touch you?

21 A No, ma'am.

22 Q Were you, in any way, detained?

23 A I don't know what you mean by, detained.

24 I was with an officer, for a few minutes there,

25 while I was escorted out of the building.

1 Q Who was that?

2 A Officer Randolph.

3 Q Did he ever leave the council chambers?

4 A He walked out with me to make sure I got
5 out of the building.

6 Q Are you sure about that?

7 A Yes.

8 Q Did he leave the building?

9 A He walked me outside of the door -- to
10 the best of my knowledge, he walked me outside of
11 the door, and then my husband and I went and got in
12 the car.

13 Q Did anyone tell you what to do after you
14 left the council chambers?

15 A No, they did not. There was nobody out
16 there but me and my husband.

17 Q Did Officer Randolph say anything to you?

18 A I don't think he did.

19 Q Other than the language in the minutes,
20 the transcript in the minutes, did anyone tell you
21 that you needed to go anywhere specific, or needed
22 to do anything specific?

23 A No.

24 Q Did you attend the council meeting after
25 the February 9th meeting?

1 A Yes. That's where I voted 'no' on the
2 minutes.

3 Q Okay. Did anything unusual happen during
4 the course of that meeting?

5 A Not to my knowledge.

6 Q You mentioned earlier that the mayor had
7 called for order with another council member at
8 that same meeting.

9 Do you remember which council member that
10 was?

11 A Taylor Graham.

12 Q And other than the portion of the minutes
13 with that transcript in it, at this council
14 meeting, do you contend anyone from the city has
15 prevented you from speaking as you wished?

16 A Other than this, no.

17 MS. SPRUILL: I'm gonna hand you what the
18 court reporter is gonna mark as Exhibit 5, and
19 I will tell you that this is the amended
20 complaint filed in this matter.

21 (Lockaby Exhibit 5, Amended Complaint,
22 marked for identification.)

23 BY MS. SPRUILL:

24 Q Have you seen that document before?

25 A I'm sure I have.

1 Q Did you review it before it was filed?

2 A I don't remember.

3 Q Will you look for me at paragraph 25, on
4 page four, and it says there that you were, "seized
5 and escorted away from the council chambers in the
6 custody of Defendants Randolph and Simpsonville."

7 Can you tell me, based on your memory of
8 that night, what that means?

9 A I was escorted out.

10 Q But you mentioned earlier that no one
11 touched you.

12 A He did not touch me; he escorted me out.

13 Q Okay. Do you believe that officer
14 Randolph was doing anything other than acting as
15 the sergeant-at-arms for the meeting, at the
16 direction of the mayor?

17 A That's exactly what he was doing.

18 Q Do you believe Mayor Curtis was doing
19 anything other than acting as the presiding officer
20 of the meeting?

21 A Yes.

22 Q Okay. Tell me about that.

23 A I believe she was. I believe she was
24 being vindictive.

25 Q Okay. But you do agree, she was the

1 presiding officer of the meeting at the time?

2 A Yes.

3 Q And as the presiding officer, she would
4 perform all those functions of the chair, from
5 Robert's rules?

6 A Yes. Or the code of conduct, whatever it
7 was.

8 Q Okay. How do you contend you were
9 unlawfully detained?

10 A I was escorted out of the meeting; I was
11 not allowed to stay in the meeting; I was not
12 allowed to represent my ward or the rest of the
13 city.

14 Q Because of the direction given by the
15 presiding officer at the meeting?

16 A Yes.

17 Q How were you arrested?

18 A I think you've already asked me, and I've
19 answered this. He escorted me out of the building.
20 I'm sure if I had not gone willingly, then I would
21 have been physically escorted out.

22 Q But that didn't happen?

23 A He did not touch me.

24 Q How do you believe you've been damaged by
25 the events we've been discussing?

EXHIBIT 3

CODE OF ORDINANCES
CITY OF
SIMPSONVILLE, SOUTH CAROLINA

Published by Order of the City Council

UPDATED November 24, 2015

ARTICLE II. COUNCIL[†]

DIVISION 1. GENERALLY

Sec. 2-31. Powers.

Except as otherwise provided, all powers of the city and the determination of all matters of policy shall be vested in the council, with each member, including the mayor, having one vote.

(Code 1995, § 2-36)

State law reference – Similar provisions, S.C. Code 1976, § 5-11-30.

Sec. 2-32. Mayor pro tempore.

(a) The council shall, at the first meeting of the newly constituted council, after any general election for municipal council, elect one of its members as mayor pro tempore for a term of two years.

(b) It shall be the duty of the mayor pro tempore to act as mayor during the absence or disability of the mayor, or in the case of a vacancy in the office of mayor. After an extended absence of six months, the mayor pro tempore's salary shall be adjusted to the current salary for the mayor for the remainder of the absence.

(Code 1995, § 2-37; Ord. No. 2015-03, 6-9-2015)

State law reference – Mayor pro tempore, S.C. Code 1976, § 5-7-190.

Sec. 2-33. Oath of mayor and council members.

The mayor and council members before entering upon the duties of their respective offices shall take the following oath:

“I do solemnly swear (or affirm) that I am duly qualified, according to the constitution of this state, to exercise the duties of the office to which I have been elected and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of the state and the United States.

“As mayor (or councilmember) of the City of Simpsonville, I will equally, fairly, and impartially, to the best of my ability, and skill, exercise the trust reposed in me, and will use my best endeavor to preserve the peace and carry into effect according to law the purpose for which I have been elected. So help me God.”

(Code 1995, § 2-38)

State Law Reference: Article VI, Section 5, SC Constitution; Section 5-15-150.

[†] **State law reference** – Council form of government, S.C. Code 1976, § 5-11-10 et seq.

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(b) In the event of a state of emergency threatening or endangering the lives, safety, health and welfare of the people within the city or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of a state of emergency, and in order to more effectively protect the lives, safety and property of the city, to define and impose a curfew applicable to all persons within the jurisdiction of the city.

(c) The mayor is hereby authorized and empowered to limit the application of the curfew to any area specifically designated and described within the jurisdiction of the city and to specific hours of the day or night; and to exempt from the curfew police officers, firefighters, doctors, nurses, and others as may be essential to the preservation of public order and immediately necessary to serve the needs of the people within the city.

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(b) No ordinance increasing or decreasing the salary of council members and the mayor shall become effective until the commencement date of the terms of two or more members elected at the next general election following the adoption of the ordinance, at which time it will become effective for all members, whether or not they were elected in that election.

(c) The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties.

(Code 1995, § 2-42; Ord. No. 2015-03, 06-09-2015)

Secs. 2-39 – 2-60. Reserved.**DIVISION 2. Meetings[†]****Sec. 2-61. Date and time.**

(a) The council, after public notice, shall meet regularly at least once in every month at such times and places as the council may prescribe by rule.

[†] State law reference – Council meetings, S.C. Code 1976, § 5-7-250.

(b) Special meetings of council may be held on the call of the mayor or a majority of the members. Notice of a special meeting shall be given immediately to all available members and the news media by the city clerk.

(c) All regular and special meetings of the council shall be open to the public.

(Code 1995, § 2-66; Ord. No. 2015-03, 06-09-2015)

Sec. 2-62. Executive sessions.

(a) The council may hold executive sessions as permitted by the state freedom of information act and this Code at such times and in such places as may be deemed necessary and in the public interest by a favorable vote of the council.

(b) Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this section, formal action means a recorded vote committing the council to a specific course of action.

(Code 1995, § 2-67)

State law reference –Executive sessions of a public body, S.C. Code 1976, § 30-4-70.

Sec. 2-63. Quorum and rules of order.

A majority of the council members serving shall constitute a quorum for the conduct of business at any meeting. The mayor or mayor pro tempore shall preside, except that in the absence of both, the members present shall elect a presiding member. Except as otherwise required by state law or ordinance, all proceedings of council shall be governed by the latest edition of “Robert’s Rules of Order, Newly Revised,” and the city attorney shall act as parliamentarian.

(Code 1995, § 2-68)

State law reference – Rules and procedures for council meetings, S.C. Code 1976, § 5-7-250(b).

Sec. 2-64. Voting requirements.

(a) All actions of the council shall be by majority vote of the members present at a public meeting, unless a different majority is required by state law or by ordinance.

(b) Every member of council present shall vote on every question except when required to refrain from voting by state law, subject to exceptions as set out in S.C. Code 1976, § 5-7-130.

(c) The vote on every question shall be by voice vote or ballot, unless a roll call vote on a question shall be called for by any member of council. The vote of each member voting on the question shall be recorded in the minutes by the city clerk. Where the vote of an individual council member is not audible to the city clerk during a voice vote, and the member has made no indication that he or she is refraining from the vote, the minutes will reflect that the member voted in the affirmative.

(d) No member of council may leave the council chamber while in public session without permission of the presiding officer.

(Code 1995, § 2-69; Ord. No. 1999-01, § 1, 1-26-1999; Ord. No. 2015-03, 06-09-2015)

Sec. 2-65. Minutes.

The clerk shall keep the minutes of all public meetings of council which shall be a matter of permanent public record. At each council meeting the minutes of the previous meeting shall be presented for approval. Minutes shall not be considered the official record of a meeting until approved by council. Any member of the council desiring to express a position on a matter voted upon by council in the minutes may do so by presenting the position in writing to the council not later than the next meeting at which votes may be taken.

(Code 1995, § 2-69)

Sec. 2-66. Appearance of citizens.

(a) Any citizen of the municipality or others who have standing in the municipality, such as business owners, shall be entitled to an appearance before council at any regular meetings concerning any municipal matter, with the exception of personnel matters. At least 10 minutes prior to the commencement of a city council meeting, such persons wishing to appear before council must place his or her name, address, and topic to be addressed on the public comments sign-up list maintained by the city clerk.

(b) Comments to the council shall be limited to three minutes, unless the city council authorizes one extension of three minutes. All remarks made by the speaker shall be addressed to council as a whole and not to any individual member of council. No profanity or personal attacks will be allowed; the speaker will forfeit their remaining time as a result of either. No person shall be permitted to enter into any discussion without the permission of the presiding officer. The purpose of addressing council is to allow council members to hear the opinions of the citizens and is not intended to afford the opportunity to engage in a debate or dialogue. Therefore, no reply or rebuttal by council members is required.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-67. Rules of decorum.

While any meeting of city council is in session, the following rules of decorum shall be observed.

(a) Any person who speaks at a city council meeting shall conduct himself or herself in a manner appropriate to the decorum of the meeting and shall not use any profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct. Any person who makes such remarks or otherwise engages in disorderly conduct which disrupts or otherwise impedes the orderly conduct of a city council meeting shall, at the discretion of the presiding officer, be barred from further audience before city council during that meeting and may be removed from the building.

(b) Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the presiding officer, it shall be the duty of such law enforcement officer to remove from the city council meeting any person who is disturbing the proceedings of the city council.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-68. Agenda.

Matters to be considered by the council at a Tuesday council meeting shall be received in the city clerk's office by noon the preceding Wednesday before a scheduled Tuesday council meeting. The mayor shall set the order of business of items on the agenda. The city clerk will have the agenda ready for council, public and media review by 5:00 p.m. the preceding Friday before a Tuesday council meeting. Matters not on the agenda may be considered upon request of a member only by majority vote.

(Code 1995, § 2-72; Ord. No. 2015-03, 06-09-2015)

Sec. 2-69. City administrator to attend.

The city administrator shall attend all meetings of the council unless excused by the council. He shall keep the council advised of the status of matters pending for council consideration, make recommendations and present ordinances and resolutions for council action, participate in the discussion of any matter involving the welfare of the city, and present items on the council agenda.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-70. City attorney to attend.

The city attorney shall attend all meetings of the council unless excused by the council. He shall act as parliamentarian, propose ordinances and resolutions, review all ordinances, resolutions and documents presented to council and give opinions upon questions of procedure, form and law to any member of council and the city administrator.

(Code 1995, § 2-73; Ord. No. 2015-03, 06-09-2015)

Sec. 2-71. City Clerk to attend.

The city clerk shall be ex officio clerk of the city council. The clerk shall give notices of meetings, post the agenda, attend regular and special meetings, record the votes of the council, keep minutes of council meetings and perform other duties as may be assigned by the council or the city administrator.

(Code 1995, § 2-74)

Sec. 2-72. Committee of the Whole.**(a) Purpose and Meeting Time.**

- (1) The City Council shall meet as a Committee of the Whole on the fourth Tuesday of the month beginning at 6:30 PM except during the months of November and December when a meeting of the Committee of the Whole will normally not occur unless called by the Mayor or a majority of council. The Committee of the Whole shall receive information concerning issues that are anticipated to come before Council. The purpose of the meeting is to provide a forum for a thorough and detailed discussion and consideration of prospective or current council agenda items.
- (2) Meetings of the Committee of the Whole will be conducted in accordance with the Council's rules of procedure, including Robert's Rules of Order. However, the presiding officer may allow procedures that would have the purpose of receiving beneficial information and facilitating healthy discussion.

(b) Operation.

- (1) The Mayor shall chair the Committee of the Whole meeting.
- (2) Public notice shall be given for all meetings as prescribed by law and agendas will be posted on the City's website.

- (3) The City Administrator shall prepare the agenda. Any member of council may place an item on the Committee of the Whole agenda. Meeting packets will be prepared by staff and provided to all council members in advance of the meeting. Items to be placed on the agenda must be received by the City Administrator no later than 12:00 PM (noon) on the Wednesday immediately preceding the meeting.
- (4) Public input.
- a. Every Committee of the Whole meeting shall include a time to receive public input.
 - b. The procedure for public speakers identified in Sec. 2-66 shall be followed. However, as long as a speaker's comments, in the sole opinion of the Council, are relevant, informative and non-repetitive, the time limits may be extended. The presiding officer may request that a public speaker hold his comments and/or return to the podium for further comments or questions from council when the particular item being addressed is reached on the meeting agenda.
- (5) Department heads will attend Committee of the Whole meetings when required by the City Administrator.

(c) Minutes shall be taken of all Committee of the Whole meetings and an audio recording made. The draft minutes shall be delivered to all council members before the council meeting at which the committee's recommendations are discussed. The minutes of each committee meeting shall serve as the report to council, however, any committee member may write a separate report.

(Ord. No. 2014-01, 5-13-2014; Ord. No. 2015-13, 11-10-2015)

Sec. 2-73. Special committees.

The council may appoint a special committee to assist in or hold a public hearing for council at any time upon any matter pending before it. Minutes or reports of hearings held by special committees shall be filed with the clerk as public records. Each such committee shall be automatically dissolved after it has completed the task(s) assigned to it by city council or eighteen months after its appointment, whichever comes first, unless council acts to extend it for a specified period of time.

(Code 1995, § 2-75: Ord. No. 2014-01, 5-13-2014; Ord. No. 2015-03, 06-09-2015)

Sec. 2-74 – 2-90 Reserved

DIVISION 3. ORDINANCES[§]

Sec. 2-91. Required.

(a) Council shall act by ordinances in all matters required by law to be done by ordinance, including to:

- (1) Adopt or amend an administrative code or ordinance, or create, alter or abolish any municipal department, office or agency.
- (2) Provide for a fine or other penalty or establish a rule or regulation in which a fine or other penalty is imposed for violations.
- (3) Appropriate funds and adopt a budget.
- (4) Grant, renew or extend franchises, licenses or rights in public streets or public property, and close abandoned streets.
- (5) Authorize the borrowing of money or the issuance of bonds.
- (6) Levy taxes, assess property for improvements or establish charges for services.
- (7) Annex area to the city.
- (8) Convey or lease or authorize the conveyance or lease of any lands of the city.
- (9) Amend or repeal any ordinance described in subsections (a)(1) through (a)(8) of this section.

(b) In all other matters the council may act either by ordinance or resolution, written or oral, recorded in the minutes.

(Code 1995, § 2-101)

State law reference – Acts required to be done by ordinance, S.C. Code 1976, §5-7-260

[§] **State law reference** –Forms and procedures for introducing and passing ordinances, S.C. Code 1976, § 5-7-270.

Sec. 2-92. Codification of ordinances.

All ordinances relating to administration, health, safety, vehicles, streets (except franchises and encroachments), traffic, railroads, crimes and offenses, utilities, solicitations, pollution, municipal court, descriptions of areas annexed to the city, and any other ordinances or portions of ordinances so required by the council shall be codified and updated annually. Standard codes, technical regulations and zoning ordinances may be cited in the Code by reference, and copies thereof shall be made available by the clerk for distribution or for purchase at a reasonable price to be determined by the city administrator.

(Code 1995, § 2-102; Ord. No. 2015-03, 06-09-2015)

State law reference – Municipal authority to codify, S. C. Code 1976, § 5-7-290.

Sec. 2-93. Notice Required

Prior to the introduction of an ordinance granting a franchise license or right for the use of any street or public property, or for the permanent closing of any abandoned street, the applicant for the ordinance shall publish a notice in three issues of a newspaper having general circulation in the city stating the nature of the franchise license or right sought or a description of the street sought to be closed, and the date on which the application is to be presented to the council which shall be at least one week after the last notice. This requirement shall not apply to the temporary closing of a public street initiated by the council.

(Code 1995. § 2-103)

Sec. 2-94. Form of ordinances.

(a) Every proposed ordinance shall be introduced in writing and in the form required for final adoption which shall include:

- (1) A title briefly describing the content.
- (2) Findings, reasons or basis for the ordinance, if desired and appropriate.
- (3) An enacting clause.
- (4) Citation of any ordinance repealed.
- (5) The provisions of the ordinance including section numbers if the ordinance is to be codified or amends an existing codified ordinance.
- (6) The effective date of the ordinance.
- (7) The name of the person requesting introduction of the ordinance.

- (8) The approval of the city attorney as to form and the assignment of an ordinance number.
- (9) Space for the signatures of the mayor or presiding member of the council and the clerk attesting notice, if required, and adoption.

(b) Written resolutions shall be in a similar form as deemed appropriate by the city attorney.

(Code 1995, § 2-104)

Sec. 2-95. Introduction of ordinances.

An ordinance may be proposed by any member of the council. A proposed ordinance shall be referred to the city attorney for approval as to form. The city attorney shall render assistance in the preparation of notices and ordinances. After an ordinance is in proper form and required notices have been given, the city attorney shall send the ordinance to the clerk to be held for public inspection. An ordinance shall be deemed to be introduced when it appears on an agenda for a public meeting of council and its title is read.

(Code 1995, § 2-105)

Sec. 2-96. Introduction of resolutions.

A voice motion of a member of council shall be considered to be the introduction of an oral resolution which shall require no written record other than a notation of the clerk in the council minutes. A resolution proposed in writing shall be introduced in the same manner as an ordinance.

(Code 1995, § 2-106)

Sec. 2-97. Enactment of ordinances.

(a) An ordinance to levy a tax, adopt a budget, appropriate funds, grant a franchise, license or right to use or occupy a public street or public property for commercial purposes shall be complete in the form in which it is finally passed, and in that form remain on file with the clerk for public inspection at least one week before final adoption.

(b) No ordinance shall be adopted until it shall have been read two times and on two separate days with at least six days between each reading.

(c) Emergency ordinances may be adopted on one reading without notice or hearing by affirmative vote of two-thirds of the members present. An emergency ordinance may not levy taxes, relate to a franchise or a service rate and shall expire automatically on the 61st day following enactment.

(d) The introduction and reading of any ordinance shall be by the reading of the title only unless a full reading is requested by a member of council.

(e) After the introduction of an ordinance, any member of the council may request a public hearing which may be held at any time designated by the council prior to final adoption.

(f) Upon final adoption by a vote of the council, an ordinance shall be signed by the mayor or presiding member and attested by the clerk, who shall file the original in the council minutes.

(Code 1995, § 2-107)

Sec. 2-98. Adoption of resolutions.

Written or oral resolutions may be adopted on one reading unless a public hearing is set by a majority of the members of the council present.

(Code 1995, § 2-108)

Secs. 2-99 – 2-130. Reserved.

EXHIBIT 4

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Sylvia Lockaby,

Plaintiff,

v.

City of Simpsonville, Janice Curtis, and
Adam Randolph,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-23-00731

PERSONALLY appeared before me Phyllis Long, who, being duly sworn, deposes and says:

1. I am over the age of 18, am competent to testify to these matters, and make this affidavit on personal knowledge.
2. My name is Phyllis Long, and I am the City Clerk for the City of Simpsonville. I have served in this role since 2013.
3. In connection with my job duties, I am familiar with the Code of Ordinances for the City of Simpsonville (“Code”).
4. Attached as Exhibit 1 to this affidavit is a true and correct copy of Article 2 of the Code that was in effect on February 9, 2016.
5. As shown in Exhibit 1, section 2-63 of the Code provided that City Council meetings “[e]xcept as otherwise required by state law or ordinance, all proceeding of council shall be governed by the latest edition of ‘Robert’s Rules of Order, Newly Revised[.]’”
6. As of February 9, 2016, the latest edition of “Robert’s Rules of Order, Newly Revised” was the 11th edition.

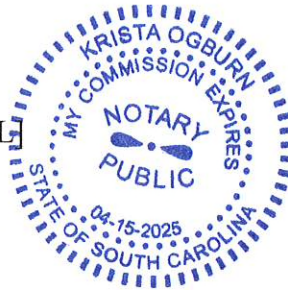
FURTHER AFFIANT SAYETH NAUGHT.

Phyllis Long
Phyllis Long

SWORN to before me this 15
day of February, 2019.

[Signature]
Notary Public of South Carolina
My Commission expires 4-15-25.

[SEAL]



ELECTRONICALLY FILED - 2019 Feb 18 4:51 PM - GREENVILLE - COMMON PLEAS - CASE#2018CP2300731
ELECTRONICALLY FILED - 2019 Apr 24 8:57 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2300731

CODE OF ORDINANCES
CITY OF
SIMPSONVILLE, SOUTH CAROLINA

Published by Order of the City Council

UPDATED November 24, 2015

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(b) In the event of a state of emergency threatening or endangering the lives, safety, health and welfare of the people within the city or threatening damage to or destruction of property, the mayor is hereby authorized and empowered to issue a public proclamation declaring to all persons the existence of a state of emergency, and in order to more effectively protect the lives, safety and property of the city, to define and impose a curfew applicable to all persons within the jurisdiction of the city.

(c) The mayor is hereby authorized and empowered to limit the application of the curfew to any area specifically designated and described within the jurisdiction of the city and to specific hours of the day or night; and to exempt from the curfew police officers, firefighters, doctors, nurses, and others as may be essential to the preservation of public order and immediately necessary to serve the needs of the people within the city.

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(c) The mayor and council members may also receive payment for actual expenses incurred in the performance of their official duties.

(Code 1995, § 2-42; Ord. No. 2015-03, 06-09-2015)

Secs. 2-39 – 2-60. Reserved.

DIVISION 2. Meetings[‡]

Sec. 2-61. Date and time.

(a) The council, after public notice, shall meet regularly at least once in every month at such times and places as the council may prescribe by rule.

[‡] State law reference – Council meetings, S.C. Code 1976, § 5-7-250.

(b) Special meetings of council may be held on the call of the mayor or a majority of the members. Notice of a special meeting shall be given immediately to all available members and the news media by the city clerk.

(c) All regular and special meetings of the council shall be open to the public.

(Code 1995, § 2-66; Ord. No. 2015-03, 06-09-2015)

Sec. 2-62. Executive sessions.

(a) The council may hold executive sessions as permitted by the state freedom of information act and this Code at such times and in such places as may be deemed necessary and in the public interest by a favorable vote of the council.

(b) Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this section, formal action means a recorded vote committing the council to a specific course of action.

(Code 1995, § 2-67)

State law reference –Executive sessions of a public body, S.C. Code 1976, § 30-4-70.

Sec. 2-63. Quorum and rules of order.

A majority of the council members serving shall constitute a quorum for the conduct of business at any meeting. The mayor or mayor pro tempore shall preside, except that in the absence of both, the members present shall elect a presiding member. Except as otherwise required by state law or ordinance, all proceedings of council shall be governed by the latest edition of “Robert’s Rules of Order, Newly Revised,” and the city attorney shall act as parliamentarian.

(Code 1995, § 2-68)

State law reference – Rules and procedures for council meetings, S.C. Code 1976, § 5-7-250(b).

Sec. 2-64. Voting requirements.

(a) All actions of the council shall be by majority vote of the members present at a public meeting, unless a different majority is required by state law or by ordinance.

(b) Every member of council present shall vote on every question except when required to refrain from voting by state law, subject to exceptions as set out in S.C. Code 1976, § 5-7-130.

(c) The vote on every question shall be by voice vote or ballot, unless a roll call vote on a question shall be called for by any member of council. The vote of each member voting on the question shall be recorded in the minutes by the city clerk. Where the vote of an individual council member is not audible to the city clerk during a voice vote, and the member has made no indication that he or she is refraining from the vote, the minutes will reflect that the member voted in the affirmative.

(d) No member of council may leave the council chamber while in public session without permission of the presiding officer.

(Code 1995, § 2-69; Ord. No. 1999-01, § 1, 1-26-1999; Ord. No. 2015-03, 06-09-2015)

Sec. 2-65. Minutes.

The clerk shall keep the minutes of all public meetings of council which shall be a matter of permanent public record. At each council meeting the minutes of the previous meeting shall be presented for approval. Minutes shall not be considered the official record of a meeting until approved by council. Any member of the council desiring to express a position on a matter voted upon by council in the minutes may do so by presenting the position in writing to the council not later than the next meeting at which votes may be taken.

(Code 1995, § 2-69)

Sec. 2-66. Appearance of citizens.

(a) Any citizen of the municipality or others who have standing in the municipality, such as business owners, shall be entitled to an appearance before council at any regular meetings concerning any municipal matter, with the exception of personnel matters. At least 10 minutes prior to the commencement of a city council meeting, such persons wishing to appear before council must place his or her name, address, and topic to be addressed on the public comments sign-up list maintained by the city clerk.

(b) Comments to the council shall be limited to three minutes, unless the city council authorizes one extension of three minutes. All remarks made by the speaker shall be addressed to council as a whole and not to any individual member of council. No profanity or personal attacks will be allowed; the speaker will forfeit their remaining time as a result of either. No person shall be permitted to enter into any discussion without the permission of the presiding officer. The purpose of addressing council is to allow council members to hear the opinions of the citizens and is not intended to afford the opportunity to engage in a debate or dialogue. Therefore, no reply or rebuttal by council members is required.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-67. Rules of decorum.

While any meeting of city council is in session, the following rules of decorum shall be observed.

(a) Any person who speaks at a city council meeting shall conduct himself or herself in a manner appropriate to the decorum of the meeting and shall not use any profane, abusive or obscene language nor any fighting words or otherwise engage in disorderly conduct. Any person who makes such remarks or otherwise engages in disorderly conduct which disrupts or otherwise impedes the orderly conduct of a city council meeting shall, at the discretion of the presiding officer, be barred from further audience before city council during that meeting and may be removed from the building.

(b) Any law enforcement officer who is serving as sergeant-at-arms of city council shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the city council meeting. Upon instruction of the presiding officer, it shall be the duty of such law enforcement officer to remove from the city council meeting any person who is disturbing the proceedings of the city council.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-68. Agenda.

Matters to be considered by the council at a Tuesday council meeting shall be received in the city clerk's office by noon the preceding Wednesday before a scheduled Tuesday council meeting. The mayor shall set the order of business of items on the agenda. The city clerk will have the agenda ready for council, public and media review by 5:00 p.m. the preceding Friday before a Tuesday council meeting. Matters not on the agenda may be considered upon request of a member only by majority vote.

(Code 1995, § 2-72; Ord. No. 2015-03, 06-09-2015)

Sec. 2-69. City administrator to attend.

The city administrator shall attend all meetings of the council unless excused by the council. He shall keep the council advised of the status of matters pending for council consideration, make recommendations and present ordinances and resolutions for council action, participate in the discussion of any matter involving the welfare of the city, and present items on the council agenda.

(Ord. No. 2015-03, 06-09-2015)

Sec. 2-70. City attorney to attend.

The city attorney shall attend all meetings of the council unless excused by the council. He shall act as parliamentarian, propose ordinances and resolutions, review all ordinances, resolutions and documents presented to council and give opinions upon questions of procedure, form and law to any member of council and the city administrator.

(Code 1995, § 2-73; Ord. No. 2015-03, 06-09-2015)

Sec. 2-71. City Clerk to attend.

The city clerk shall be ex officio clerk of the city council. The clerk shall give notices of meetings, post the agenda, attend regular and special meetings, record the votes of the council, keep minutes of council meetings and perform other duties as may be assigned by the council or the city administrator.

(Code 1995, § 2-74)

Sec. 2-72. Committee of the Whole.

(a) Purpose and Meeting Time.

- (1) The City Council shall meet as a Committee of the Whole on the fourth Tuesday of the month beginning at 6:30 PM except during the months of November and December when a meeting of the Committee of the Whole will normally not occur unless called by the Mayor or a majority of council. The Committee of the Whole shall receive information concerning issues that are anticipated to come before Council. The purpose of the meeting is to provide a forum for a thorough and detailed discussion and consideration of prospective or current council agenda items.
- (2) Meetings of the Committee of the Whole will be conducted in accordance with the Council's rules of procedure, including Robert's Rules of Order. However, the presiding officer may allow procedures that would have the purpose of receiving beneficial information and facilitating healthy discussion.

(b) Operation.

- (1) The Mayor shall chair the Committee of the Whole meeting.
- (2) Public notice shall be given for all meetings as prescribed by law and agendas will be posted on the City's website.

- (3) The City Administrator shall prepare the agenda. Any member of council may place an item on the Committee of the Whole agenda. Meeting packets will be prepared by staff and provided to all council members in advance of the meeting. Items to be placed on the agenda must be received by the City Administrator no later than 12:00 PM (noon) on the Wednesday immediately preceding the meeting.
- (4) Public input.
 - a. Every Committee of the Whole meeting shall include a time to receive public input.
 - b. The procedure for public speakers identified in Sec. 2-66 shall be followed. However, as long as a speaker's comments, in the sole opinion of the Council, are relevant, informative and non-repetitive, the time limits may be extended. The presiding officer may request that a public speaker hold his comments and/or return to the podium for further comments or questions from council when the particular item being addressed is reached on the meeting agenda.
- (5) Department heads will attend Committee of the Whole meetings when required by the City Administrator.

(c) Minutes shall be taken of all Committee of the Whole meetings and an audio recording made. The draft minutes shall be delivered to all council members before the council meeting at which the committee's recommendations are discussed. The minutes of each committee meeting shall serve as the report to council, however, any committee member may write a separate report.

(Ord. No. 2014-01, 5-13-2014; Ord. No. 2015-13, 11-10-2015)

Sec. 2-73. Special committees.

The council may appoint a special committee to assist in or hold a public hearing for council at any time upon any matter pending before it. Minutes or reports of hearings held by special committees shall be filed with the clerk as public records. Each such committee shall be automatically dissolved after it has completed the task(s) assigned to it by city council or eighteen months after its appointment, whichever comes first, unless council acts to extend it for a specified period of time.

(Code 1995, § 2-75: Ord. No. 2014-01, 5-13-2014; Ord. No. 2015-03, 06-09-2015)

Sec. 2-74 – 2-90 Reserved

DIVISION 3. ORDINANCES[§]

Sec. 2-91. Required.

(a) Council shall act by ordinances in all matters required by law to be done by ordinance, including to:

- (1) Adopt or amend an administrative code or ordinance, or create, alter or abolish any municipal department, office or agency.
- (2) Provide for a fine or other penalty or establish a rule or regulation in which a fine or other penalty is imposed for violations.
- (3) Appropriate funds and adopt a budget.
- (4) Grant, renew or extend franchises, licenses or rights in public streets or public property, and close abandoned streets.
- (5) Authorize the borrowing of money or the issuance of bonds.
- (6) Levy taxes, assess property for improvements or establish charges for services.
- (7) Annex area to the city.
- (8) Convey or lease or authorize the conveyance or lease of any lands of the city.
- (9) Amend or repeal any ordinance described in subsections (a)(1) through (a)(8) of this section.

(b) In all other matters the council may act either by ordinance or resolution, written or oral, recorded in the minutes.

(Code 1995, § 2-101)

State law reference – Acts required to be done by ordinance, S.C. Code 1976, §5-7-260

[§] **State law reference** –Forms and procedures for introducing and passing ordinances, S.C. Code 1976, § 5-7-270.

Sec. 2-92. Codification of ordinances.

All ordinances relating to administration, health, safety, vehicles, streets (except franchises and encroachments), traffic, railroads, crimes and offenses, utilities, solicitations, pollution, municipal court, descriptions of areas annexed to the city, and any other ordinances or portions of ordinances so required by the council shall be codified and updated annually. Standard codes, technical regulations and zoning ordinances may be cited in the Code by reference, and copies thereof shall be made available by the clerk for distribution or for purchase at a reasonable price to be determined by the city administrator.

(Code 1995, § 2-102; Ord. No. 2015-03, 06-09-2015)

State law reference – Municipal authority to codify, S. C. Code 1976, § 5-7-290.

Sec. 2-93. Notice Required

Prior to the introduction of an ordinance granting a franchise license or right for the use of any street or public property, or for the permanent closing of any abandoned street, the applicant for the ordinance shall publish a notice in three issues of a newspaper having general circulation in the city stating the nature of the franchise license or right sought or a description of the street sought to be closed, and the date on which the application is to be presented to the council which shall be at least one week after the last notice. This requirement shall not apply to the temporary closing of a public street initiated by the council.

(Code 1995. § 2-103)

Sec. 2-94. Form of ordinances.

(a) Every proposed ordinance shall be introduced in writing and in the form required for final adoption which shall include:

- (1) A title briefly describing the content.
- (2) Findings, reasons or basis for the ordinance, if desired and appropriate.
- (3) An enacting clause.
- (4) Citation of any ordinance repealed.
- (5) The provisions of the ordinance including section numbers if the ordinance is to be codified or amends an existing codified ordinance.
- (6) The effective date of the ordinance.
- (7) The name of the person requesting introduction of the ordinance.

- (8) The approval of the city attorney as to form and the assignment of an ordinance number.
- (9) Space for the signatures of the mayor or presiding member of the council and the clerk attesting notice, if required, and adoption.

(b) Written resolutions shall be in a similar form as deemed appropriate by the city attorney.

(Code 1995, § 2-104)

Sec. 2-95. Introduction of ordinances.

An ordinance may be proposed by any member of the council. A proposed ordinance shall be referred to the city attorney for approval as to form. The city attorney shall render assistance in the preparation of notices and ordinances. After an ordinance is in proper form and required notices have been given, the city attorney shall send the ordinance to the clerk to be held for public inspection. An ordinance shall be deemed to be introduced when it appears on an agenda for a public meeting of council and its title is read.

(Code 1995, § 2-105)

Sec. 2-96. Introduction of resolutions.

A voice motion of a member of council shall be considered to be the introduction of an oral resolution which shall require no written record other than a notation of the clerk in the council minutes. A resolution proposed in writing shall be introduced in the same manner as an ordinance.

(Code 1995, § 2-106)

Sec. 2-97. Enactment of ordinances.

(a) An ordinance to levy a tax, adopt a budget, appropriate funds, grant a franchise, license or right to use or occupy a public street or public property for commercial purposes shall be complete in the form in which it is finally passed, and in that form remain on file with the clerk for public inspection at least one week before final adoption.

(b) No ordinance shall be adopted until it shall have been read two times and on two separate days with at least six days between each reading.

(c) Emergency ordinances may be adopted on one reading without notice or hearing by affirmative vote of two-thirds of the members present. An emergency ordinance may not levy taxes, relate to a franchise or a service rate and shall expire automatically on the 61st day following enactment.

(d) The introduction and reading of any ordinance shall be by the reading of the title only unless a full reading is requested by a member of council.

(e) After the introduction of an ordinance, any member of the council may request a public hearing which may be held at any time designated by the council prior to final adoption.

(f) Upon final adoption by a vote of the council, an ordinance shall be signed by the mayor or presiding member and attested by the clerk, who shall file the original in the council minutes.

(Code 1995, § 2-107)

Sec. 2-98. Adoption of resolutions.

Written or oral resolutions may be adopted on one reading unless a public hearing is set by a majority of the members of the council present.

(Code 1995, § 2-108)

Secs. 2-99 – 2-130. Reserved.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF
COMMON PLEAS OF THE
THIRTEENTH JUDICIAL CIRCUIT

SYLVIA LOCKABY,
Plaintiff,

CIVIL ACTION NO.
2018-CP-23-00731

vs.

CITY OF SIMPSONVILLE,
JANICE CURTIS, ADAM
RANDOLPH,

Defendants.

VIDEOTAPED DEPOSITION OF PHYLLIS LONG

DATE TAKEN: November 8, 2018

TIME BEGAN: 10:14 a.m.

TIME ENDED: 10:46 a.m.

LOCATION: Haynsworth Sinkler Boyd, P.A.
One North Main
Second Floor
Greenville, South Carolina

REPORTED BY: Eileen Thompson, CCR
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

1 knee wall, there are three chairs -- three black
2 leather chairs, and I sit in the first chair.

3 Q. Okay. And where did Council Member
4 Lockaby sit, when she was on council?

5 A. The council members are seated on the
6 dais, which is in the center of long shot, and
7 they're seated in order of ward. So Council Member
8 Lockaby would be in the last seat on the right
9 representing Ward Six.

10 Q. Okay. And where did the mayor sit?

11 A. The mayor sits in the middle, between the
12 three wards on the left and three wards on the
13 right.

14 Q. And for sake of reference, how far roughly
15 -- I know you don't have a tape measure in front of
16 you -- but how far is your chair from what was
17 Council Members Lockaby's chair, when she was on
18 council?

19 A. It is approximately 15 feet.

20 Q. Okay. And with respect to the transcript
21 portion of Exhibit 2, the minutes of that February
22 9th meeting, is that accurate, as to the portion of
23 the meeting that is transcribed there?

24 A. Yes.

25 Q. And when did you stop the recording?

1 A. When Mayor Curtis called recess for five
2 minutes.

3 Q. Okay. And did Council Member Lockaby
4 leave that meeting after you stopped the recording?

5 A. Yes.

6 Q. Before she left, did she challenge the
7 mayor's ruling?

8 A. No.

9 Q. Did she say anything else to council?

10 A. No.

11 Q. Did anybody on council say anything to
12 her?

13 A. No.

14 Q. Okay. Was -- to your recollection, was
15 Council Member Lockaby arrested?

16 A. Oh, no, she was not.

17 Q. Did Adam Randolph or anyone else touch
18 Council Member Lockaby?

19 A. No.

20 Q. Would you remember, if that had happened?

21 A. Yes, ma'am.

22 Q. Would that have been unusual?

23 A. Very unusual.

24 Q. And in the pictures, where did -- where
25 did officer -- well, where generally did the

1 sergeant-at-arms for council members -- for council
2 meetings stand in the room, during the meeting?

3 A. It's not visible in the close-up, but in
4 the long shot, it would be on the left side in the
5 very back of the council chamber. It's not visible
6 in the photo, but it's past all of the seating, all
7 the way to the back of the council chamber on the
8 left.

9 Q. And what did the -- what was the
10 sergeant-at-arms' role in council meeting normally?

11 A. As far as I know, their role is to scan
12 all of the participants of the council meeting and
13 all of the citizens that attend the council meeting
14 through their metal detector for safety purposes.
15 And then he is the sergeant-of-arms to the mayor and
16 the council.

17 Q. And does the sergeant-at-arms, can they --
18 can they leave the meeting?

19 A. No.

20 Q. And did you hear Council Member Lockaby
21 say anything, as she was leaving the room that
22 night?

23 A. She did say something. Best of my
24 knowledge, it was something like, "I'm leaving
25 anyway."

1 Q. Okay. And what was that in response to?

2 A. Because the mayor had asked the
3 sergeant-of-arms to come forward to the front of the
4 council chambers, and he was standing on the
5 left-hand side of the chamber, and she was on the
6 right, and --

7 Q. "She," Council Member Lockaby?

8 A. I'm sorry. Council Member Lockaby was on
9 the right, coming down from the dais where her seat
10 is. And she crossed in front of the dais toward the
11 sergeant-of-arms and said, "I'm leaving anyway."

12 Q. Okay. And how did you observe council
13 member Lockaby to leave the meeting?

14 A. How did I observe her? I'm not sure I
15 understood.

16 Q. Sure. Did she -- was she rushing out of
17 the room?

18 A. Oh, no, she gathered her things and walked
19 out, took her husband with her.

20 Q. Okay. And would you characterize her
21 actions, as she left, as voluntary or involuntary?

22 A. Voluntary.

23 Q. Okay. Is there anything else you recall
24 about Council Member Lockaby and how she came to
25 leave the meeting we've been discussing in your

EXHIBIT 6

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Sylvia Lockaby,

Plaintiff,

v.

City of Simpsonville, Janice Curtis, and
Adam Randolph,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-23-00731

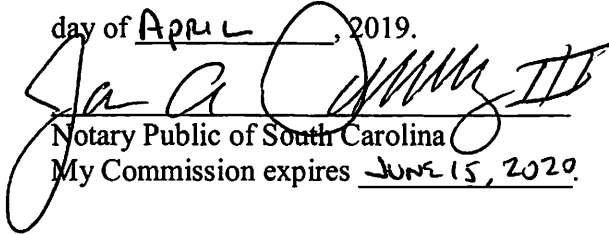
PERSONALLY appeared before me Adam Randolph, who, being duly sworn, deposes and says:

1. I am over the age of 18, am competent to testify to these matters, and make this affidavit on personal knowledge.
2. My name is Adam Randolph, and I am a sergeant with the Police Department for the City of Simpsonville (“Department”). I have worked for the Department since January 2012.
3. On the night of February 9, 2016, I was serving as sergeant-at-arms for a meeting of the Simpsonville City Council.
4. I have reviewed the minutes of the City Council meeting and confirm that the transcript of the meeting in the minutes is consistent with my memory.
5. At the time the recording stopped, I believe I was in the front of the Council Chamber near the Councilmembers. As I recall, Councilmember Lockaby said something to the effect of “That’s fine. I was leaving anyway.”
6. Councilmember Lockaby then gathered her things, got up, and left voluntarily accompanied by her husband.
7. I followed behind them as they left the Council Chambers and went down the stairs to the rear exit of City Hall. I then watched as the Lockabys exited the building.
8. At that time, I returned to my post in Council Chambers.
9. At no time during these events did I touch or arrest Councilmember Lockaby.

FURTHER AFFIANT SAYETH NAUGHT.


Adam Randolph

SWORN to before me this 12
day of April, 2019.


Notary Public of South Carolina
My Commission expires JUNE 15, 2020.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-23-00731

Sylvia Lockaby,

Plaintiff,

vs.

**City of Simpsonville, Janice Curtis, and
Adam Randolph,**

Defendants.

MOTION FOR CONTINUANCE

YOU WILL PLEASE TAKE NOTICE that the Plaintiff hereby moves pursuant to Rule 40(i), SCRPC, and all other applicable law, for an order that continues the hearing now set for April 25, 2019, on the Defendants' motion for summary judgment in the above-captioned action.

The grounds for this motion are as follows:

1. Good cause exists for a continuance of this motion hearing. The Defendants have failed to provide full and complete responses to the Plaintiff's discovery requests, and the Plaintiff has moved to compel full and complete responses.
2. Discovery rights afford a litigant the opportunity to prepare for trial. Conway v. Charleston Lincoln Mercury Inc., 363 S.C. 301, 308, 609 S.E.2d 838, 842 (Ct. App. 2005). Where discovery rights are not afforded, prejudice is presumed. Id.
3. Similarly, discovery affords a litigant the opportunity to prepare to meet an opponent's summary judgment motion.
4. The purpose of discovery is to mandate full and fair disclosure to prevent trial from becoming a guessing game or one of ambush. Cel Products, LLC v. Rozelle, 357 S.C. 125, 132, 591 S.E.2d 643, 646 (Ct. App. 2004). If the Defendants are not compelled

to provide full and complete responses to the Plaintiff's discovery requests, the Plaintiff will be prejudiced unfairly in this action.

5. This prejudice includes, but is not limited to, diminishment of the Plaintiff's ability to take a meaningful deposition of defendants in this case and impairment of the Plaintiff's ability to oppose the Defendants' motion for summary judgment in this case.
6. Further, with the incomplete responses that have been provided by the Defendants, the hearing on the Defendant's motion for summary judgment would essentially be the guessing game or ambush that discovery is designed to prevent.
7. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

Pursuant to Rule 11, SCRPC, the undersigned certifies that Plaintiff's counsel has communicated with opposing counsel in a good faith effort to resolve the matters subject of this motion.

Respectfully submitted,

/s/ Andrew S. Radeker

Taylor M. Smith IV (S.C. Bar No. 101584)
Andrew S. Radeker (S.C. Bar No. 73743)
HARRISON, RADEKER & SMITH, P.A.
Post Office Box 50143
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(803) 779-2211
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taylor@harrisonfirm.com (email)
drew@harrisonfirm.com (email)
ATTORNEYS FOR PLAINTIFF

M. Brooks Derrick (S.C. Bar No. 76330)
LAW OFFICE OF
M. BROOKS DERRICK, LLC
224 N.E. Main Street
Simpsonville, South Carolina 29681
(864) 757-0757
brooks@derricklawoffice.com (email)
ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
April 24, 2018

Drew Radeker

From: Spruill, Sarah <sspruill@hsblawfirm.com>
Sent: Tuesday, April 23, 2019 1:47 PM
To: Taylor Smith
Cc: brooks@derricklawoffice.com; davidholmes@holmes-law.com; Drew Radeker; Barry, Janice; David Holmes
Subject: RE: Sylvia Lockaby v. City of Simpsonville, et al.

See my first paragraph in my letter—we have done nothing to hinder your discovery in this matter, and I have had to struggle to get any written responses from you or to schedule depositions.

Please call the clerk's office to find out the next available date. If it gives us enough time to get a ruling before any trial preparation would need to begin, I will consent to the continuance.



Sarah P. Spruill | Attorney
 Direct 864.240.3220 | sspruill@hsblawfirm.com
 Haynsworth Sinkler Boyd, P.A.
 ONE North Main, 2nd Floor | Greenville, SC 29601
 Main 864.240.3200 | Fax 864.240.3300
[Web](#) | [Bio](#) | [vCard](#) | [Map](#) | [Linked In](#) | [Blog](#)

From: Taylor Smith <Taylor@harrisonfirm.com>
Sent: Tuesday, April 23, 2019 1:41 PM
To: Spruill, Sarah <sspruill@hsblawfirm.com>
Cc: brooks@derricklawoffice.com; davidholmes@holmes-law.com; Drew Radeker <Drew@harrisonfirm.com>; Barry, Janice <jbarry@hsblawfirm.com>
Subject: RE: Sylvia Lockaby v. City of Simpsonville, et al.

Sarah,

Thank you for the supplemental responses. I have only briefly reviewed what you provided, but we still have some concerns with some of your responses, especially those related to your client's legal defenses in this matter. At this time though, I feel it prudent to shift my focus to this week's plan summary judgment hearing. While I don't think a motion to compel discovery is necessary quite yet – I would like to explain our concerns one more time so you may have an opportunity to supplement again – I do believe our inability to wrap up this discovery has materially impaired our ability to prepare for your motion hearing this week.

Would you consent to a continuance of this week's motion hearing so we may finish discovery in this matter?

Kindly let me know soon as I will need to file a motion very soon if you do not consent. Thank you.

Taylor M. Smith IV



923 Calhoun Street,
Columbia, South Carolina 29201
Post Office Box 50143,
Columbia, South Carolina 29250
Telephone: (803) 779-2211
Facsimile: (803) 779-6700
www.harrisonfirm.com

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From: Barry, Janice
Sent: Tuesday, April 23, 2019 11:47 AM
To: Taylor Smith
Cc: brooks@derricklawoffice.com; davidholmes@holmes-law.com; Spruill, Sarah
Subject: Sylvia Lockaby v. City of Simpsonville, et al.

Ms. Spruill asked that I forward the attached to you by email and U.S. Mail. Please contact me if you have any trouble opening the attachment.



Janice M. Barry | Legal Secretary
Direct 864.240.3223 | jbarry@hsblawfirm.com
Haynsworth Sinkler Boyd, P.A.
ONE North Main, 2nd Floor | Greenville, SC 29601
Main 864.240.3200 | Fax 864.240.3300

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Drew Radeker

From: Drew Radeker
Sent: Tuesday, April 23, 2019 3:18 PM
To: Spruill, Sarah; Taylor Smith
Cc: David Holmes
Subject: RE: Lockaby v. City of Simpsonville, 2018CP2300731

We could always move the trial. It wouldn't need to moved out much.

Let me know your thoughts.

Thanks.

Drew Radeker



923 Calhoun Street,
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From: Spruill, Sarah
Sent: Tuesday, April 23, 2019 3:08 PM
To: Drew Radeker ; Taylor Smith
Cc: David Holmes
Subject: FW: Lockaby v. City of Simpsonville, 2018CP2300731

Drew and Taylor:

We can't consent to that—we're on the trial roster for that week.



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From: NJCoord <NJCoord2@greenvillecounty.org>
Sent: Tuesday, April 23, 2019 3:05 PM
To: Drew Radeker <Drew@harrisonfirm.com>
Cc: Taylor Smith <Taylor@harrisonfirm.com>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Spruill, Sarah <sspruill@hsblawfirm.com>; Derrick, Brooks <brooks@derricklawoffice.com>; Barry, Janice <jbarry@hsblawfirm.com>
Subject: RE: Lockaby v. City of Simpsonville, 2018CP2300731

My next available term of court is the week of June 17th.

Ginger Ritchie

Non-Jury/Motions Coordinator
Greenville County Clerk of Court
Ph (864) 467-8546
Fax (864) 467-8519
e-mail: njcoord@greenvillecounty.org

From: Drew Radeker [<mailto:Drew@harrisonfirm.com>]
Sent: Tuesday, April 23, 2019 2:42 PM
To: NJCoord
Cc: Taylor Smith; Rhonda Schaub; Spruill, Sarah; Derrick, Brooks; Barry, Janice
Subject: Lockaby v. City of Simpsonville, 2018CP2300731

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Good afternoon. We're contemplating a consent continuance of the motion for summary judgment hearing that is now set for this Thursday, while we work through some things. Opposing counsel has asked a good question: What are the next available dates after this term when this motion could be heard?

If you would let us know what dates you have in that regard, we would be most appreciative.

Thank you. Of course, if you or other court personnel have any questions or concerns, please do not hesitate to contact me.

Drew Radeker



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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-23-00731

Sylvia Lockaby,

Plaintiff,

vs.

**City of Simpsonville, Janice Curtis, and
Adam Randolph,**

Defendants.

**MEMORANDUM IN OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

The Plaintiff hereby submits this memorandum in opposition to the Defendants' motion for summary judgment in this action. For several reasons, the Defendants are not entitled to summary judgment.

SUMMARY JUDGMENT STANDARD IS HARD TO MEET

It is well settled that "summary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of the law." Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986).

"All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Nelson v. Charleston County Parks & Recreation Comm., 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion

for summary judgment.” Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 802-3 (2009).

Under Rule 56, SCRCP, “the party seeking summary judgment has the initial responsibility of demonstrating the absence of any genuine issue of material fact.” Baughman v. American Telephone & Telegraph Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545-46 (1991). “The party seeking summary judgment has the burden of clearly establishing by the record properly before the court the absence of a triable issue of fact.” Owens v. Magill, 308 S.C. 556, 562, 419 S.E.2d 786, 790 (1992). “A party who fails to show the absence of genuine issue of material fact is not entitled to summary judgment even though his adversary does not come forward with opposing materials.” Standard Fire v. Marine Contracting, 301 S.C. 418, 421, 392 S.E.2d 460, 462 (1990).

ISSUES OF MATERIAL FACT ARE PRESENT

Plaintiff has brought this suit because her rights of freedom of expression under the First Amendment to the United States Constitution were violated when, during a council meeting, while she had been provided the floor by Defendant Curtis, she was seized and expelled from the Simpsonville City Council business meeting on February 9, 2016. Plaintiff was a member of Simpsonville City Council at the time and was simply participating in the council meeting, albeit making mention of something Defendant Curtis, the mayor, did not want to hear. Defendants say they are entitled to summary judgment on two grounds: 1) the facts of this matter indicate Plaintiff had an opportunity to appeal the expulsion ruling from the presiding officer and, because she failed to exercise her right of appeal, her claims are barred and 2) the facts indicate the Plaintiff’s expulsion by the mayor was a legislative act that affords Defendants legislative immunity from Plaintiff’s claims. Underpinning both of those claims are the facts concerning the seizure in question and how those facts relate to the actions by Defendants Curtis and Randolph. (Defendant

Randolph is the Simpsonville police officer who removed the Plaintiff from the council meeting.) There is disagreement between the parties as to material matters of fact regarding this inquiry, among them 1) the words spoken by Plaintiff after Defendant Curtis ordered her removal and 2) the voluntariness of Plaintiff's actions during and immediately after the ruling from the presiding officer.

In Defendants' memorandum in support of summary judgment, excerpts from the deposition of Phyllis Long and the affidavit of Adam Randolph are included for the proposition that Plaintiff said "I'm leaving anyway" after the ruling from Defendant Curtis. (Defendant's Memorandum 5-6.) Nowhere in Plaintiff's deposition does she testify to having said those words. Her deposition testimony is that she did not say them. Furthermore, the approved minutes of the February 9, 2016, business meeting in question do not state that Plaintiff said those words. (Id. at 4; Exhibit 1 to Defendant's Memorandum.) The relevant exchange occurs at the end of excerpted portion in the minutes:

Mayor Curtis: I need her out.

Officer: Councilmember Lockaby, will you come with me, please?

Mayor Curtis: We'll take a five minute recess. [Gavels.]

(Id.)

Had Plaintiff actually said "I'm leaving anyway," that would have been included in the approved minutes. Defendants cite on page 8 of their memorandum to Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992) for the statement of law that

[a] town council has the express duty to keep minutes of its proceedings which shall be a public record. S.C. Code Ann. § 5-7-250(b) (1976). Municipal records properly authenticated or verified are the only competent evidence of the proceedings of the

transactions of the governing body. 5 E. McQuillan, The Law of Municipal Corporations § 14.05 (3d ed. 1989). Parol evidence cannot be admitted to explain, enlarge, or contradict minutes of the proceeding of a town council unless the minutes are incomplete or ambiguous. Id. § 14.07. Otherwise, parol evidence could render official minutes uncertain and unreliable so that the minutes would fail to afford dependable evidence of the proceedings of the municipal body. Id.

The deliberative legislative process of approving minutes provides for the discussion and potential inclusion of facts which do not appear in the notes or audio recording of the meeting in question. If a member of the legislative body had an objection to the proposed minutes at the next meeting, that person would presumably ask for inclusion of certain omitted facts or, if those facts remained omitted from the proposed minutes, he or she would vote against the minutes adoption. The approved minutes for the March 8, 2016 business meeting of the Simpsonville City Council reflect that the vote to approve the February 9, 2016, minutes was carried 6 to 1, with only Plaintiff voting no, because she was not present¹ for the duration of the February 9th meeting. Defendants are not be permitted in this action to “explain, enlarge, or contradict” the approved minutes of the February 9, 2016 business meeting of the Simpsonville City Council. Berkeley at 208. Here, “further inquiry into the facts” is required; accordingly, summary judgment is not appropriate. Folkens at 196.

Defendants’ memorandum in support of summary judgment repeatedly states that Plaintiff voluntarily left the February 9th meeting, which is simply not true. As stated above, the approved minutes reflect that Defendant Curtis said she wanted Plaintiff out of the meeting and then Defendant Randolph, an armed, uniformed police officer, said, “Councilmember Lockaby, will you come with me, please?” A reasonable inference from these two statements is that Plaintiff, at this point in the meeting, was not free to remain in her seat, Defendant Curtis had directed

¹ (See Lockaby deposition 23, ln. 9-13 (filed April 23, 2019).)

Defendant Randolph to remove the Plaintiff from the meeting, and Defendant Randolph was in the process of enforcing what Defendant Curtis told him to do. Such an inference is supported by statements from Plaintiff in her deposition to this matter.

Q. Okay. How do you contend you were unlawfully detained?

A. I was escorted out of the meeting; I was not allowed to represent my ward or the rest of the city.

Q. Because of the direction given by the presiding officer at the meeting?

A. Yes.

Q. How were you arrested?

A. I think you've already asked me, and I've answered this. He escorted me out of the building. I'm sure if I had not gone willingly, then I would have been physically escorted out.

(Lockaby deposition 30, ln. 8-21 (filed April 23, 2019).)

Plaintiff's belief, quite reasonable under the circumstances, that she would have been physically escorted out had she refused to leave rebuts the Defendants' theory that she left the council meeting voluntarily. In United States v. Mendenhall, the Supreme Court of the United States held that "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." 446 U.S. 544, 554 (1980). It is difficult to see how a reasonable person would believe he or she had a choice about whether to leave the meeting after Defendant Curtis had said to Randolph "I need her out" and Randolph cordially (and professionally) said "...will you come with me, please?" Simply because Randolph was being polite in his phrasing does not mean that he or the mayor were giving the Plaintiff an option to

remain in the meeting. A reasonable person would have perceived his only options to be the ones that the Plaintiff perceived: follow Randolph out of the meeting or be picked up or dragged out by him. There is evidence here that Plaintiff did not leave the February 9, 2016, meeting voluntarily. The questions of fact concerning the voluntariness (or lack thereof) of Plaintiff's departure from the meeting are material to the outcome of this case. They are, therefore, questions of material fact.

ROBERT'S RULES OF ORDER DOES NOT PROVIDE A DEFENSE

Defendants ask this court to rule that Robert's Rules of Order provide them with a defense. For this argument, the Defendants do not claim that they did not violate Plaintiff's constitutional rights, just that Robert's Rules of Order provide them with a defense to that. To the undersigned's knowledge, there is no reported decision of an appellate court in this entire nation that had ever held that. The Defendants are not entitled to summary judgment on this or any basis. Robert's Rules of Order has never been held to provide a defense to one who violates another's constitutional rights.

Defendants' motion for summary judgment contends Plaintiff had an opportunity to appeal the expulsion ruling from the presiding officer and takes the position that, because she failed to exercise her right of appeal, her claims are barred. Defendants seem to argue this as a sort of failure to exhaust administrative remedies argument. First of all, an appeal under Robert's Rules of Order is not an administrative remedy.

Second, assuming the statements by Defendant Curtis in the approved minutes of the Simpsonville City Council meeting in question provide constitute a "ruling"², there is no indication Plaintiff had any time to appeal the decision by Curtis ("I need her out") before Defendant

² Robert's Rules of Order provides no definition of "ruling."

Randolph began carrying out Defendant Curtis' directive to remove the Plaintiff. The lack of any statement from Plaintiff between the statements of Defendants Curtis and Randolph is conspicuous and creates a reasonable inference there was no opportunity for Plaintiff to object, much less lodge a formal appeal.

Defendants' reliance on the appeal procedures of the Robert's Rules of Order, 11th Edition (hereinafter "Robert's Rules"), is misplaced. Robert's Rules do not indicate an appeal is possible in this scenario. Section 24 of Robert's Rules provides an appeal "can be applied to any ruling by the presiding officer except that: ...b) when the chair rules on a question about which there cannot possibly be two reasonable opinions, an appeal is dilatory and is not allowed." Here, at the moments directly after Defendant Curtis repeatedly interrupts Plaintiff during her questioning of the city administrator regarding a matter of public concern (while Plaintiff has the floor), when Defendant Curtis has stated "I need her out"³, there are not two reasonable opinions regarding the correctness of Defendant Curtis' censorship of Plaintiff. The only reasonable opinion about that is that this censorship was unlawful.

Further, Rule 3 of Section 24 of Robert's Rules provides that an appeal "[i]s in order when another has the floor, but the appeal must be made at the time of the ruling. If any debate or business has intervened, it is too late to appeal." Robert's Rules at 256-7. What intervened was Defendant Randolph carrying out the command given to him by Defendant Curtis.

Rule 61 of Robert's Rules governs "Discipline of Members and Guests." Robert's Rules at 643.

Although the chair has no authority to impose a penalty or to order the offending member removed from the hall, the assembly has that power. It should be noted in this connection that in any case of an offense against the assembly occurring in a meeting, there is no need

³ Under Defendants' theory this is presumably a ruling on the question of Plaintiff's "arguing the point" which Defendant Curtis said in the approved minutes was not appropriate then, a matter Plaintiff contests in this matter.

for a formal trial provided that any penalty is imposed promptly after the breach, since the witnesses are all present and make up the body that is to determine the penalty.

Id. at 646.

The approved minutes of the Simpsonville meeting in question reflect no indication by Defendant Curtis of the “offense” committed by Plaintiff, much less action by the “body” to constitute a lawful penalty against Plaintiff. Id. No vote was taken, nor was any other parliamentary procedure followed. Not only was Plaintiff denied an opportunity to understand her offense against city council, but she also wasn’t afforded an opportunity to say a word (much less appeal the phantom determination/“ruling”) before Defendant Curtis ordered her ejection. Plaintiff cannot be denied recovery in this case as a matter of law for her supposed failure to exercise her right of appeal. The Defendants are certainly not entitled to summary judgment on that theory.

THE DEFENDANTS ARE NOT ENTITLED TO IMMUNITY

Defendants’ motion for summary judgment argues that the actions taken by Defendant Mayor Jane Curtis in removing Plaintiff from the business meeting are subject to absolute legislative immunity. First of all, the Defendant ignore controlling law that provides that they are not eligible for the immunity they seek. The South Carolina Supreme Court has held that “individual members of a local county council are not entitled to absolute immunity.” Brown v. County of Berkeley, 366 S.C. 354, 622 S.E.2d 533 (2005) (citing Richardson v. McGill, 273 S.C. 142, 146, 255 S.E.2d 341, 343 (1979)).

Defendants rely principally on Whitener v. McWatters, 112 F.3d 740, 741 (4th Cir. 1997), which held that disciplinary actions taken by a legislative body against a member of that body are part of the legislative process, and, thus, when a county board censured one its members for uncivil conduct toward other board members, the censured board member’s § 1983 suit was barred by

legislative immunity and dismissed. For several important reasons, Whitener is distinguishable from this case. Like the Plaintiff, Whitener was a board member of the public body and meeting in question. But, unlike in this case, Whitener's conversations with board members outside of an official public meeting were determined to have "exceeded the bounds of decency and civility." Whitener, 112 F.3d at 741. The record in this case does not contain any evidence that would support an argument that it was proper for Defendant Curtis to interrupt and eject Plaintiff from the meeting in question. With all ambiguities, conclusions, and inferences arising from the evidence construed most strongly against the Defendants, it is simply not possible to view Plaintiff's words as exceeding the bounds of decency and civility or for any of Plaintiff's conduct to have afforded even an arguable basis for her removal.

Further, in the instant case, there is no legislative action involved. In Whitener, the Fourth Circuit Court of Appeals examined action taken by the full board of supervisors (upon the recommendations of a committee appointing by the full board to "investigate the complaint and make recommendations"). Whitener, 112 F.3d at 741. "This case concerns the vote of the Board of Supervisors in policing its own ethics violations, obviously a core legislative activity." Id. The Whitener court said that the Plaintiff in that case "may not challenge legislative voting or inquire as to how votes are made" ... "[t]his brings the case directly into the bar of legislative immunity." Id. at 742. This case is not about a vote by the Simpsonville City Council to discipline Plaintiff. It is not a case about Simpsonville City Council taking a vote at all. The approved minutes and the evidence make clear that the decision to eject and arrest Plaintiff was Defendant Mayor Curtis' alone. Finally, in Whitener, the Plaintiff also argued the board's vote to censure him was a violation of his First Amendment rights under the U.S. Constitution, which the Fourth Circuit Court of Appeals did not buy. Id. at 745. "Whitener was disciplined for his lack of decorum, not for

expressing his view on policy.” Id. Whitener was not so much a legislative immunity case as a case in which no constitutional violation occurred at all.

In this case, the approved minutes and other evidence do not suggest that Plaintiff was arrested for a lack of decorum. The approved minutes show that in fact, Plaintiff was arrested for discussing a matter of policy, storm water issues and curb replacement, during the business meeting of the public body. The violations of Plaintiff’s rights did not arise from either the legislative process or any legislative activity that would entitle Defendants to absolute legislative immunity.

Defendants also seek summary judgment on the ground that the South Carolina Tort Claims Act provides that “immunity extends to legislative, judicial, or quasi-judicial action or inaction.” S.C. Code Ann. § 15-78-60. As discussed above, this case does not concern a legislative act. Even if it did, though, legislative immunity would not apply. “Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts.” Bruce v. Riddle, 631 F.2d 272, 279 (4th Cir. 1980). The evidence here shows that Plaintiff was arrested without any probable cause to suggest Plaintiff was committing or had committed a crime – and the Defendants do not argue that there was any such probable cause. Further, “individual members of a local county council are not entitled to absolute immunity.” Brown, 366 S.C. at 354 (2005). A grant of absolute legislative immunity under the South Carolina Tort Claims Act to the Defendants is not appropriate in this matter.

Certainly, with all reasonable inferences being drawn in favor of the Plaintiff, as they must be, the Defendants have not shown what they must show to prove that they are entitled to absolute legislative immunity.

THE LACK OF A FULL AND FAIR OPPORTUNITY TO COMPLETE DISCOVERY

“Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a full and fair opportunity to complete discovery.” Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003) (internal quotation marks omitted); accord Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 363, 563 S.E.2d 331, 334 (2002); Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001); Baughman v. American Telephone and Telegraph Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). A full and fair opportunity to complete discovery has not been had here. As is shown by the attachments to the Plaintiff’s recently filed motion to compel discovery, the Defendants have “answered” Plaintiff’s discovery requests without actually answering the discovery requests. The Plaintiff would like to take additional depositions in this case but needs actual discovery answers from the Defendants to do so in a meaningful way.

Plaintiff expects the Defendants to contend that the Plaintiff has been dilatory in discovery. That is not accurate. More to the point, though, that would not get the Defendants off the hook on this issue. In Baughman, our Supreme Court, in determining that a grant of summary judgment should be reversed because the plaintiffs had not had a full and fair opportunity to complete discovery, “acknowledge[d] that more than three years elapsed between the filing of these actions and the final granting of partial summary judgment as to personal injury. The delays in completing discovery, however, may not fairly be attributed solely to Plaintiffs’ inaction.” 306 S.C. at 113. Even if the court were to find, somehow, that the Plaintiff had engaged in some discovery delay, it would not come anywhere close to that in Baughman – where the Court *still* did not find the plaintiffs’ discovery delay sufficient to uphold the summary judgment ruling.

CONCLUSION

There are facts in this record that support Plaintiff's case, and there will likely be more if the Plaintiff gets true and complete discovery responses and conducts more depositions. The Defendants' theories about why they are entitled to summary judgment have large legal flaws. The Defendants' motion cannot be properly granted.

Respectfully submitted,

/s/ Taylor Smith
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ATTORNEY FOR DEFENDANTS

Columbia, South Carolina
April 24, 2019

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	C/A No.: 2018-CP-23-00731
Sylvia Lockaby,)	
)	
Plaintiff,)	DEPOSITION
)	
vs.)	OF
)	
City of Simpsonville, Janice)	
Curtis, and Adam Randolph,)	JANICE CURTIS
)	
Defendants.)	
)	

Tuesday, May 7, 2019
1:09 p.m. until 2:16 p.m.

Deposition of JANICE CURTIS, taken before Robin K. Reibold, CVR, a notary public in and for the State of South Carolina, commencing Tuesday, May 7, 2019, at 1:09 p.m., at the offices of Haynsworth Sinkler Boyd, PA, One North Main Street, Second Floor, Greenville, South Carolina.

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APPEARANCES

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Also Present:

Sylvia Lockaby
David W. Holmes, Esq.

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Plaintiff's Exhibit Number 1	30
(Council meeting minutes - 2/9/16)	

JANICE CURTIS 5/7/2019

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STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

- - - -

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

JANICE CURTIS, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. SMITH:

Q. Thank you, Ms. Curtis, for being here today.

A. Yes.

Q. I'm Taylor Smith. I'm the attorney for the plaintiff, Ms. Sylvia Lockaby, who is here with me today.

A. Uh-huh.

Q. So this deposition is being conducted according to the Rules of Civil Procedure of South Carolina and

JANICE CURTIS 5/7/2019

1 the laws of this state. There are two things I
2 just want to remind you of before we get started.
3 The first is, for the aid of our court reporter
4 today, if you would please not nod or shake your
5 head, but give yes or no.

6 A. Sure.

7 Q. That will help her with figuring out what you're
8 trying to convey. The second thing is, I want you
9 to know that to the extent you need a recess,
10 restroom, whatever you need, just let me know and
11 we'll take a few minute recess to the extent you
12 need it. But be aware that during the recess our
13 laws don't allow you to confer with counsel during
14 that time. However, if there is something that
15 needs to happen in that respect with Ms. Spruill,
16 then we'll consult and figure out if that's
17 appropriate for that to happen at that time.

18 A. Sure.

19 Q. Otherwise, I will have the opportunity to question
20 you to the extent you have received anything that's
21 non-attorney/client privilege material during that
22 period of time. Does that make sense?

23 A. It does.

24 Q. Okay. Then I'll go ahead and get started and start
25 with the basics.

Robin K. Reibold, CVR
(803)447-7868/rkreibold@yahoo.com

JANICE CURTIS 5/7/2019

- 1 A. Okay.
- 2 Q. First is, what -- give me your full name please.
- 3 A. Janice Curtis.
- 4 Q. Okay. Do you have a middle name?
- 5 A. Janice Smith Curtis.
- 6 Q. Okay. Is Smith your born middle name, or is that a
7 maiden name?
- 8 A. It's a maiden name.
- 9 Q. Okay. At your birth what was your born middle
10 name?
- 11 A. Faye.
- 12 Q. Faye, okay.
- 13 A. F-A-Y-E.
- 14 Q. Thank you. I was going to ask that. And what was
15 your date of birth?
- 16 A. [REDACTED]/61.
- 17 Q. Okay. All right. And where were you born?
- 18 A. I was born in Cherokee, North Carolina.
- 19 Q. Okay. Do you reside in the county of Greenville?
- 20 A. I do.
- 21 Q. Okay. What is your address?
- 22 A. 1500 Brentwood Way, Simpsonville, 29680.
- 23 Q. Okay. And how long have you resided at that
24 address?
- 25 A. We have lived there, let's see, 27-plus years.

Robin K. Reibold, CVR
(803)447-7868/rkreibold@yahoo.com

JANICE CURTIS 5/7/2019

- 1 Q. Okay. Did you reside in Greenville before that
2 address?
- 3 A. I resided in Travelers Rest.
- 4 Q. Okay. What was that address?
- 5 A. I don't remember. Sorry.
- 6 Q. Okay. That's okay. Is the neighborhood you are a
7 part of, does it have a homeowners association?
- 8 A. No, sir.
- 9 Q. Okay. Does it have any neighborhood association or
10 any other --
- 11 A. No, sir.
- 12 Q. Okay. And where do you work, if you do work, in
13 Greenville County?
- 14 A. I own a business on Fairview Road in Simpsonville.
- 15 Q. Okay. And what's that business called?
- 16 A. It's called Merle Norman Cosmetics.
- 17 Q. Okay. And approximately how many people do you
18 employ at Merle Norman?
- 19 A. I have my daughter-in-law and my niece that work
20 there with me, and I have a couple of elderly
21 ladies that come in and out.
- 22 Q. Okay. And are you the proprietor of that
23 establishment?
- 24 A. I am.
- 25 Q. Okay. How is that business organized? Is it a

Robin K. Reibold, CVR
(803)447-7868/rkreibold@yahoo.com

JANICE CURTIS 5/7/2019

- 1 sole proprietorship that's under your name? Do you
2 have a board or an LLC or --
- 3 A. It's a corporation.
- 4 Q. A corporation.
- 5 A. It's under a corporation. Yes.
- 6 Q. Okay. And are you one of its shareholders?
- 7 A. I'm the only shareholder.
- 8 Q. Okay. Thank you. Now, what is -- under the rules
9 governing your corporate structure, what is your
10 title as an officer of that entity? Are you
11 president, are you vice president?
- 12 A. I'm the president.
- 13 Q. President. Okay. And as part of that business are
14 you part of any local chamber of commerce or any
15 entity like that?
- 16 A. I am.
- 17 Q. What's that entity called?
- 18 A. Simpsonville Chamber of Commerce.
- 19 Q. Okay. And how long has Merle Norman, the
20 establishment you've been running, been a member of
21 that chamber of commerce?
- 22 A. Fourteen years.
- 23 Q. Okay. How long have you been operating that --
- 24 A. Fourteen years.
- 25 Q. Okay. And did you start that business there?

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- 1 A. I did.
- 2 Q. Okay. Are you, in terms of your work through Merle
3 Norman, a part of any statewide, countywide, or
4 even federal trade association of any kind?
- 5 A. No, sir.
- 6 Q. Okay. Does Merle Norman work like a franchise?
- 7 A. It does.
- 8 Q. Okay. Are you familiar with where Merle Norman's
9 headquarters is nationally or internationally?
- 10 A. California.
- 11 Q. California?
- 12 A. Los Angeles, California.
- 13 Q. Okay. Locally, have you taken any position with
14 your local chamber of commerce, perhaps as an
15 office holder in that organization?
- 16 A. No, sir. No, sir.
- 17 Q. Okay. Do you regularly attend the meetings of that
18 chamber of commerce?
- 19 A. They just have the, I think it's the board of
20 directors meeting, and I don't attend that because
21 I'm not part of anything as far -- I'm just a
22 member.
- 23 Q. Yes, ma'am.
- 24 A. That's all.
- 25 Q. Okay. Do you have any children?

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- 1 A. I do.
- 2 Q. Okay. How many children do you have?
- 3 A. Two.
- 4 Q. And what are their names and ages?
- 5 A. One is Jeremy Leon Smith, he is 38. And
- 6 Christopher Joseph White, he is 35.
- 7 Q. Okay. Are either of your children married?
- 8 A. Both.
- 9 Q. Okay. If you wouldn't mind giving me the spouse
- 10 and the child you're speaking of's names.
- 11 A. Christopher White is married to Alison White.
- 12 Q. Do they have any children?
- 13 A. Two.
- 14 Q. And what are their names and ages?
- 15 A. We have Cooper White, he's 11. And Parker White,
- 16 he is 7. And then my other son, his wife is Tanya,
- 17 Tanya Smith. And they have two children. One is
- 18 Olivia York, and one is Harper Smith.
- 19 Q. Okay. Do you have, outside of your immediate
- 20 family, any other family living in the Greenville
- 21 County area?
- 22 A. I do.
- 23 Q. Okay. Let's start with siblings. Do you have any
- 24 siblings living in Greenville County?
- 25 A. I do.

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1 Q. If you wouldn't mind, give me their names.

2 A. Okay. First is -- well, my sister lives in Laurens
3 County. In Greenville County, my brother Marty
4 Smith lives in Travelers Rest. And my brother
5 David Smith lives in Landrum.

6 Q. Okay. Could you -- do you recall Marty's address
7 by chance in Travelers Rest?

8 A. I don't. I'm sorry.

9 Q. That's okay. What about your other brother, do you
10 recall his address?

11 A. I don't. I'm sorry.

12 Q. That's okay. Do either of them have -- are they
13 married?

14 A. They are.

15 Q. Okay. And what are their spouses' names?

16 A. Tammy Smith and -- well, David's divorced, so.

17 Q. Okay.

18 A. Yeah.

19 Q. Do either of them have any children?

20 A. They do.

21 Q. Okay. Can we start with their names and ages, if
22 we can?

23 A. Okay. If I can remember their ages. Let's see.
24 Marty and Tammy have Heather. Heather is roughly
25 30. Brittany, roughly 28; Jeffrey, 25, 26; Casey,

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1 probably -- I don't know, we'll say somewhere
2 around 22, 23.

3 Q. Okay.

4 A. And then David has Luke, which is probably about
5 20. Amber is 23, 24. And then Dustin is probably
6 about 25. And those are all guesses because I
7 don't --

8 Q. I understand.

9 A. Yes.

10 Q. I understand. So that's the siblings. Do you have
11 any living aunts or uncles in the Greenville County
12 area?

13 A. I do not.

14 Q. Okay. What about grandparents, do you have any?

15 A. I do not.

16 Q. Okay. Are you married?

17 A. I am.

18 Q. What's your husband's name?

19 A. George Curtis.

20 Q. Okay. And what's George's middle name?

21 A. Lee, L-E-E.

22 Q. All right. Approximately how old is George?

23 A. George is 56.

24 Q. Okay.

25 A. Fifty-five, 56? That's bad, but I don't -- 55.

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1 Q. I understand. Does George have any family in the
2 Greenville County area?

3 A. He does. He has one sister living in Greenville
4 County.

5 Q. What's her name?

6 A. Marie Dorrell, D-O-R-R-E-L-L.

7 Q. Okay. Thank you for the spelling.

8 A. Yes.

9 Q. Where does she live?

10 A. She lives in Foxwood subdivision.

11 Q. Okay. And is that also in Simpsonville?

12 A. It is.

13 Q. Okay.

14 A. I do not know the street address that she's at.
15 Sorry.

16 Q. I understand. Are his parents still alive?

17 A. No, sir.

18 Q. Okay. Do you know if he has any cousins that live
19 in the Greenville County area?

20 A. No, sir. No cousins.

21 Q. Any other family that you know if he has in the
22 Greenville County area?

23 A. No, sir.

24 Q. Okay. My understanding is that -- well, first let
25 me back up and ask this: Is your husband employed?

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- 1 A. He is.
- 2 Q. Okay. Where does he work?
- 3 A. Sealed Air Corporation in Simpsonville.
- 4 Q. Okay. What is his job with Sealed Air?
- 5 A. He's an electronics technician.
- 6 Q. Okay. Approximately how many employee does Seal
- 7 Air have, do you know?
- 8 A. I have no idea.
- 9 Q. Okay. And how long has he worked there?
- 10 A. Twenty-nine years.
- 11 Q. Okay. My understanding is that at some point he
- 12 was, like yourself, also on Simpsonville city
- 13 council; is that correct?
- 14 A. Correct.
- 15 Q. Okay. When did he get on Simpsonville city
- 16 council?
- 17 A. I don't recall. I'm sorry.
- 18 Q. That's okay. Do you think we can do an
- 19 approximation? Was it in the 1980s? 1990s? 2000s?
- 20 A. No, it was -- no, no. It was probably the early
- 21 2000s.
- 22 Q. Okay.
- 23 A. Yeah, would be my best guess.
- 24 Q. And just as a frame of reference in my head, when
- 25 did you join council?

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1 A. I was sworn into office in 2016.

2 Q. Okay. Did you attend any council meetings when
3 your husband was on council?

4 A. Yes, sir.

5 Q. Okay. How often would you attend meetings back
6 then?

7 A. Pretty regular.

8 Q. Okay. Would you often discuss the business of
9 counsel with your husband?

10 A. Not regularly. By the time we got home we were so
11 burnt out on it that -- no.

12 Q. Okay. In addition to the regular business
13 meetings, did you attend any of the other special
14 meetings that council held?

15 A. A couple of the budget meetings.

16 Q. Okay. When at any point did you become acquainted
17 with my client, Ms. Sylvia Lockaby, in your life?

18 A. Whenever she was -- whenever she was sworn into
19 office and took the seat. I don't even remember
20 what year it was. I'm sorry.

21 Q. That's okay. Was that while you were in office or
22 while your husband was in office?

23 A. My husband.

24 Q. Okay. Was there a gap in time between when your
25 husband held office on council and when you assumed

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1 office?

2 A. No, sir.

3 Q. Okay. And when you noticed my client joined
4 counsel, how would you characterize your husband's
5 interaction with my client once she joined council?

6 A. Business.

7 Q. So would you say the relationship seemed
8 professional?

9 A. Sure.

10 Q. Okay. How often were you able to discuss the
11 interactions of my client and council with your
12 husband?

13 A. I don't know that we discussed your client
14 particularly between us. I can't say that we ever
15 did that.

16 Q. Okay. Am I correct in understanding that the
17 elections to the city council are non-partisan?

18 A. Correct.

19 Q. Having said that, do you identify with a particular
20 political party?

21 A. I do.

22 Q. And what party would that be?

23 A. Republican.

24 Q. Okay. And how long have you identified yourself as
25 a Republican?

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1 A. My entire voting life.

2 Q. Okay. And what -- when was the first election you
3 recall voting in?

4 A. Probably Reagan.

5 Q. Okay. Would that be his first --

6 A. Presidential.

7 Q. His first presidential run, in 1980?

8 A. I think, uh-huh.

9 Q. Okay. Thank you. Are you, as an identified
10 Republican, a part of any local Republican
11 organization, whether it be at the city level, the
12 county level, or the state level?

13 A. County level.

14 Q. The county level. And how are you involved?

15 A. I'm just a member of the Greenville County
16 Republican Party.

17 Q. Okay. Do you attend meetings of the party?

18 A. Not regularly, no.

19 Q. Okay. Do you -- of the constituency of council
20 that existed around the time that gave rise to
21 these allegations in 2016, --

22 A. Yes.

23 Q. -- are you aware of any other council members at
24 that time that identified with Republicans -- as
25 Republicans?

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1 A. That never came up, so I don't know.

2 Q. Okay. Did you ever see any member of council at
3 any of those Republican meetings that you attended?

4 A. Not that I can recall but, I mean, back then I
5 wasn't a member of the Greenville County Republican
6 Party. I wasn't a member of that.

7 Q. Okay.

8 A. I was a member of the Golden Strip Republican Women
9 at that point, but not a member of the Greenville
10 County Republican Party.

11 Q. Okay. When did you become a member of the
12 Greenville County Republican Party?

13 A. About a month ago.

14 Q. Okay. And when did you become a member of -- you
15 said Golden Strip --

16 A. -- Republican Women?

17 Q. Yes, ma'am.

18 A. I'm no longer a member of that. As a matter of
19 fact, it's defunct now. So, gosh, probably six
20 years ago maybe.

21 Q. That's when your involvement ended, six years ago?

22 A. No, that's when I was involved with them --

23 Q. Okay.

24 A. -- was about six years ago. And that only lasted
25 for about a year, maybe a year and a half.

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1 Q. Okay. And that organization was called the Golden
2 Strip Republican --

3 A. -- Republican Women.

4 Q. -- Women? Okay. Why did you join that
5 organization?

6 A. I was approached by one of my customers to join
7 this organization, so I told her I would attend,
8 and that's what I did. I attended, and then
9 ultimately probably I would say maybe the third or
10 fourth meeting I joined. Because that's how they
11 raised funds. So I wrote them a check and, like I
12 say, that lasted for maybe a year, year and a half.

13 Q. And just to be sure I'm clear on the timeline, it
14 was about six years ago you said?

15 A. I think so.

16 Q. At that time were you thinking about running for
17 office?

18 A. No, sir.

19 Q. When did you first think about running for office?

20 A. It was the July before the following year. So,
21 yeah, that would have been about six years ago, uh-
22 huh.

23 Q. Okay. Did your involvement in the Golden Strip
24 Republican Women's organization play a role in your
25 decision to run?

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1 A. No.

2 Q. Okay. What would you describe as your motivation
3 to run, if there is one thing?

4 A. I don't know that there is one thing, so.

5 Q. Are there a few things that maybe you decided, that
6 would inform your decision to run?

7 A. I mean, I don't -- I don't know that there was one
8 determining factor. I think there was a lot that
9 was going on as far as my husband had decided he
10 wasn't going to do it again. And that's whenever I
11 said, well, we own a business here, we live here,
12 we're raising grandchildren here, one of us needs
13 to be up there, so.

14 Q. How familiar would you say you were at the time
15 with the issues facing the city of Simpsonville?

16 A. I knew what was going on.

17 Q. Were there any particular issues you cared a lot
18 about at that time?

19 A. I cared a lot about my city in general.

20 Q. Okay. Why did you decide to join the Republican --
21 the county Republican Party last month?

22 A. Last month I decided that -- I joined that leading
23 up to the presidential election for 2020.

24 Q. Okay. And why is that?

25 A. I just wanted to be a part of the 2020 campaign.

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- 1 Q. Okay. Are we talking about the presidential
2 campaign or --
- 3 A. Presidential.
- 4 Q. Okay.
- 5 A. Yes, presidential campaign.
- 6 Q. Okay. I understand. And what will be your
7 involvement with trying to achieve re-election for
8 the president in 2020, through that organization?
- 9 A. It will be very limited.
- 10 Q. Okay. Is there a reason you support his candidacy?
- 11 A. Support President Trump's candidacy?
- 12 Q. Yes, ma'am.
- 13 A. Well, it think that our country is doing better
14 financially right now so, yeah, that would be the
15 main reason.
- 16 Q. Okay. Are there any other reasons why you're
17 supporting him for re-election?
- 18 A. No. No.
- 19 Q. Okay. Are there -- is there something about his
20 leadership style that you've tried to emulate as
21 mayor of the city of Simpsonville?
- 22 A. I don't appreciate his leadership style.
- 23 Q. Well, why not?
- 24 A. He's very bombastic, and I don't appreciate that in
25 anyone. And I think there are rules in place that

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1 we all need to follow.

2 Q. Okay. Have you received any support, whether
3 through campaign advising, in your runs for mayor
4 at any point during your time in council?

5 A. I don't understand what you're asking.

6 Q. In terms of advice, have you had any advisors,
7 people who have worked with you on your campaigns
8 to try to achieve the office that you hold now?

9 A. No one has advised me, no.

10 Q. Okay. Have you received any donations at any point
11 to run for mayor, either the first time or this
12 last time, at any point?

13 A. I've only ran for mayor once.

14 Q. Okay.

15 A. And, yes, I received donations.

16 Q. Okay. And who provided those donations?

17 A. There were numerous donations.

18 Q. Okay.

19 A. Let's see, there was -- do I have to name every one
20 of them for you individually that I can recall or -
21 -

22 Q. Yes, ma'am. But you can -- you can take your time
23 with this. You can start any way you want.

24 A. Okay. I'm going to just -- I mean, based on what I
25 can recall. We have Hunter Howard, Ralph

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1 Hendricks, Marion Hendricks, Claudette and Gerald
2 Reece, Ryan Hoefer. That's about all I can recall.

3 Q. Okay.

4 A. There was a group, something about -- there was a
5 group that hosted some type of dinner for me, but I
6 can't tell you the name of the group. I don't
7 remember it.

8 Q. Do you recall approximately when that dinner was?

9 A. It was a barbeque, and it was probably September,
10 October 2015.

11 Q. Okay. When did you take office?

12 A. January 2016.

13 Q. And the election, was that November of 2015?

14 A. November of '15.

15 Q. Okay. Do you recall who hosted that dinner?

16 A. It was this group, but I don't remember the name of
17 the group.

18 Q. Okay. Was it at a business or in a home?

19 A. No, it was at a park shed at a pool in Poinsettia.

20 Q. Okay.

21 A. And that's a subdivision in Simpsonville.

22 Q. Okay. Thank you for clarifying that.

23 A. Yes.

24 Q. Did you at that time see any member of council at
25 either that dinner or at any other fundraiser that

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1 may have been attended on your behalf?

2 A. Any other member of the council. Let's see.

3 Probably the only member of council that I can

4 recall would have been Mr. Gooch. He was a current

5 member. So, yes, that would be the only one that I

6 can recall.

7 Q. Do you recall which event he attended or events he

8 attended?

9 A. He attended the one that I just spoke of.

10 Q. Okay. And that was the fundraising dinner?

11 A. It was.

12 Q. Okay. Did Council Member Gooch and you discuss at

13 all your plans for the upcoming election if you

14 were to win?

15 A. No.

16 Q. Okay. Was the first business meeting where you

17 presided as mayor in January of 2016?

18 A. It was.

19 Q. Okay. How, if at all, did you want to

20 differentiate yourself between your predecessor in

21 that office when you took office?

22 A. At that particular point I didn't know that I

23 wanted to differentiate myself from anything.

24 Q. What did you want to stand for as mayor?

25 A. Business, number one; bringing civility to

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1 Simpsonville.

2 Q. Okay. And in terms of business, that was growing
3 business?

4 A. Correct.

5 Q. Okay. And civility, was that a response to the
6 lack of civility that may have existed in the city
7 or perhaps on city council before?

8 A. Yes.

9 Q. Okay. If you could, could you just give me a
10 little more information on that? I'm not from the
11 area. What have you noticed about it being uncivil
12 before?

13 MS. SPRUILL: Object to the form of the question.

14 Q. You can go ahead and answer.

15 MS. SPRUILL: You can answer.

16 A. Okay. What did I --

17 Q. Notice about uncivility on council or in the city
18 prior?

19 A. Okay. Uncivility would have to include the fact
20 that we as a city had to bring in a metal detector
21 to check everyone that was coming in and out of the
22 building because there had been several threats
23 made against different ones. And just the general
24 atmosphere of complete chaos.

25 Q. When did those threats begin, to your recollection?

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1 A. Are you asking about a date?

2 Q. A year even. I don't know the period of which you
3 are speaking. How much earlier was it when you
4 took office?

5 A. I don't recall. I don't recall.

6 Q. Okay. Was it during the time when your husband was
7 on council that you noticed this?

8 A. Yes.

9 Q. Okay. And were any threats made specifically
10 against your husband?

11 A. Threats were made against me and my husband, yes.

12 Q. Do you recall the substance of any of the threats
13 made against you or your husband?

14 A. Just -- no I don't. Just threats in general.

15 Q. Do you recall at all as to why the threats were
16 made against you also, in addition to your husband?

17 A. I don't know.

18 Q. Was it the threats made against you and your
19 husband that gave rise to the use of metal
20 detectors?

21 A. The use of metal detectors came to be not only
22 because of my husband and I. I mean, it was across
23 the board.

24 Q. Do you recall other council members, or even city
25 staff, that may have been on the receiving end of

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1 those threats?

2 A. Certainly.

3 Q. Do you know who it was in terms of names?

4 A. Well, okay, let's see, there was Mr. Garrett, Mr.
5 Gooch, and of course my husband. Eventually -- I
6 would say that's probably it, because Mr. Graham
7 was voted in to office and Mr. Garrett left. So --
8 yeah, Mr. Garrett, Mr. Gooch, my husband.

9 Q. Was a vote taken by council to start using
10 additional security measures?

11 A. I don't recall that. I don't recall.

12 Q. Okay. Who administered the additional security
13 measures at that time?

14 A. The police officers.

15 Q. Okay. That would be the Simpsonville city police?

16 A. Correct.

17 Q. Okay. Do you recall the name of any of the
18 officers who may have been assisting at that time?

19 A. I do not.

20 Q. Okay. And how long were the metal detectors in
21 place?

22 A. What are you talking about?

23 Q. I apologize, I thought you said earlier that metal
24 detectors were one of the security measures that
25 they implemented?

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1 A. Yes.

2 Q. How long were they in place? How long did they use
3 them at council meetings?

4 A. They use them whenever you enter the door to come
5 into the council meetings.

6 Q. Are they still using them today?

7 A. Yes.

8 Q. Okay. Thank you.

9 A. Uh-huh.

10 Q. How did you hope to make council more civil?

11 A. By following the rules.

12 Q. And what rules are you referring to?

13 A. I'm referring to the Code of Ordinances and -- yes.

14 Q. I'm sorry. For the city of Simpsonville, those --

15 A. Correct.

16 Q. -- ordinaces? Okay. Anything -- any other guiding
17 principles?

18 A. Robert's Rules of Order.

19 Q. Okay. Was -- looking back in 2016, do you feel
20 your efforts were successful in making council more
21 civil?

22 A. I feel like all of our efforts were successful.
23 Not just mine, but all of our efforts were
24 successful, yes.

25 Q. Okay. And that would -- you mentioned earlier your

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1 primary motivation as being business, growth of
2 business locally, and civility, so how do you think
3 the business climate was bettered in 2016?

4 A. Was bettered in 2016? I don't know that it was
5 bettered in 2016. But it certainly has been better
6 in 2017, '18, '19, so.

7 Q. Then looking forward at '17, '18, '19, do you feel
8 you have also been able to accomplish your goal of
9 better civility?

10 A. Yes.

11 Q. Okay.

12 A. And it was "our" goal.

13 Q. Are there specific moments that you can look back
14 on to judge how civility has been bettered during
15 this period of time?

16 A. Are you wanting me to pull one particular --

17 Q. If there is any moment or action taken by council
18 that would be able to evidence the greater
19 civility.

20 A. Just in general. Just in general.

21 Q. Okay. So how do you measure that personally?

22 A. It's measured by the fact that we are able to come
23 in there and conduct business for the city and
24 leave and still have the ability to come back
25 together for the betterment of the city.

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1 Q. Okay. And in terms of coming back together, are
2 you referring to the formal monthly business
3 meetings or are you --

4 A. Correct.

5 Q. Okay. During your time in 2016 were there any
6 other times that the council had a quorum present
7 where y'all met that was not a business meeting?

8 A. No, sir.

9 Q. Okay. What about in 2017, can you think of any
10 time where the council members had a quorum present
11 but it was not in a business meeting?

12 A. 2017, a quorum. Well, we have -- we do have the
13 event Celebrate Simpsonville at the park, and
14 that's open to the general public and we can all
15 come together for that celebration there. But
16 we're all -- we all may be there at the same time
17 but we're not conducting business, if that's what
18 you're asking, so.

19 Q. Okay. All right. What was your perception of my
20 client when you became mayor?

21 A. We were -- we were serving the city. We were
22 business cohorts. We were actually working on the
23 council together.

24 Q. Did you regard my client any differently than you
25 regarded other members of council at the time?

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1 A. Absolutely not. No, I didn't. I mean, I don't
2 have any dislike for her. It's just -- it was
3 business.

4 Q. Okay.

5 A. Simply business.

6 Q. All right. All right. I'm going to mark the
7 minutes of Simpsonville city council as Plaintiff's
8 Exhibit 1.

9 (Plaintiff's Exhibit Number 1 was marked for
10 identification.)

11 MS. SPRUILL: You didn't bring extra copies?

12 MR. SMITH: I did not. These are the same thing attached.

13 MS. SPRUILL: Okay.

14 MR. SMITH: These don't have a stamp, but --

15 MS. SPRUILL: Okay.

16 MR. SMITH: You're welcome to examine them if you need to.

17 MS. SPRUILL: No, that's fine.

18 MR. SMITH: All right. I'm passing this to the deponent.

19 BY MR. SMITH: (Resuming)

20 Q. Mayor Curtis, do you recognize that document?

21 A. I do.

22 Q. What is that document?

23 A. This is the minutes of the Simpsonville city
24 council business meeting, February the 9th, 2016,
25 6:30 p.m., city council chambers, 118 Northeast

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JANICE CURTIS 5/7/2019

1 Main Street.

2 Q. Thank you. Does that document reflect minutes as
3 they are often approved by council?

4 A. As they are often approved, yes.

5 Q. Okay. Does -- is that set of minutes that you are
6 viewing there different in any respect from the
7 normal minutes that are approved in council?

8 A. I don't know what you mean by different.

9 Q. Okay. I'll rephrase the question. Do you see any
10 type of information in that minute -- in those
11 approved minutes that does not appear in minutes
12 that are often approved by council?

13 A. I think this is a verbatim transcript, and the ones
14 that we normally get are not verbatim.

15 Q. Okay. Are you referring to what I believe is right
16 below the sixth or seventh bullet on that page, the
17 second page of those minutes? The verbatim?

18 A. Sixth or seventh bullet?

19 Q. On the second page.

20 A. Oh. Yes.

21 Q. Okay. What is your understanding as to why that
22 was included in these minutes?

23 A. Well, it was my understanding that it's written on
24 request from Council Member Lockaby. That's what
25 it says here in the minutes, that it's being

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1 written at the request of Council Member Lockaby.

2 Q. Okay.

3 A. In reading it.

4 Q. Do you recall when the request you just referenced
5 was made by Ms. Lockaby?

6 A. I have no knowledge of her request.

7 Q. Okay. When were those minutes approved?

8 A. These minutes would have been approved at our
9 Committee of the Whole meeting, which would have
10 been the second Tuesday following this.

11 Q. So am I correct in thinking March 2016?

12 A. No, it would have been February -- two weeks out
13 from that would have been February the -- probably
14 the 28th or something.

15 Q. Okay.

16 A. I mean, I don't remember the exact date.

17 Q. What is the typical process for the creation of
18 minutes to be submitted to council for approval?

19 A. We receive packets emailed to us as far as
20 containing a synopsis of how the votes were taken.

21 Q. Okay. And who -- who sends that synopsis?

22 A. Our city clerk.

23 Q. Okay. How do you understand the city clerk creates
24 that initial draft of the synopsis?

25 A. How do I understand -- rephrase that please.

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1 Q. How do you understand the clerk develops an idea as
2 to what to put in the synopsis?

3 A. Well, I've never asked her that question, so.

4 Q. Okay. Of what purpose are minutes for a city
5 council such as Simpsonville?

6 A. The minutes are for referring back as far as votes
7 go and things that we actually have coming before
8 us in our next meeting or need particular
9 additional information on.

10 Q. Okay. And is it the city clerk who drafts the
11 proposed minutes?

12 A. Yes.

13 Q. Okay. Do you know if the city clerk in early 2016
14 around the time of this case used any notes or
15 audio or video to help create these minutes?

16 A. I don't know that for a fact, but she is normally
17 recording it, yes.

18 Q. Okay. Did you -- when did you first receive an
19 indication that these particular minutes before you
20 would receive -- would receive that verbatim
21 section in these minutes?

22 A. Probably before the next meeting.

23 Q. Do you recall when that may have been?

24 A. I do not. I do not.

25 Q. Do you know if it was shortly before that meeting,

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1 like a day or two before, or if it was shortly
2 after the previous meeting that you got that
3 indication?

4 A. I don't recall. I'm sorry. I don't recall.

5 Q. And do you recall how -- in what form that
6 indication may have come? Did someone tell you?
7 Did you see the proposed minutes?

8 A. I believe that -- I believe that Mr. Holmes had
9 told me.

10 Q. Okay. And I don't want you to share any attorney-
11 client privilege material with me, but what did Mr.
12 Holmes tell you?

13 MS. SPRUILL: I'm going to object and instruct her not to
14 answer to the extent it has any legal advice. If
15 it has something to do with a fact, you can testify
16 about that.

17 MR. SMITH: We're asking about the creation of the minutes
18 here. So to the extent that is work product then -
19 - is that how you're construing your objection?

20 MS. SPRUILL: My objection is not to work product; there
21 was not litigation threatened at the time. My
22 objection is attorney-client to the extent you may
23 be asking her for legal advice she might have
24 received in her role as mayor of Simpsonville.

25 MR. SMITH: Okay. All right. Then I'll rephrase the

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1 question.

2 BY MR. SMITH: (Resuming)

3 Q. Did you receive any advice from any council member
4 about these proposed minutes before they were
5 adopted?

6 A. No, sir.

7 Q. Okay. When, in relation to the previous meeting
8 that these minutes concern, --

9 A. Uh-huh.

10 Q. -- did you receive an indication that this verbatim
11 may be included in the minutes?

12 A. I did.

13 Q. Do you recall when that was?

14 A. Wait a minute. Rephrase that question for me.

15 Q. With respect the meeting --

16 A. Uh-huh.

17 Q. -- that these minutes concern, --

18 A. Uh-huh.

19 Q. -- when did you receive an indication that this
20 verbatim would be included in the minutes?

21 A. This verbatim, to the best of my recollection, was
22 not included in the original minutes. It just
23 indicated, much like above your point, your
24 paragraph there above that, as you can see how it's
25 written there -- for instance, "Motion by

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1 Councilmember Gooch, with a 2nd by Councilmember
2 Cummings to pass Resolution 2016-01. Passed
3 unanimously." That's how we get our minutes. This
4 didn't come in our minute packet.

5 Q. Okay. Had you had an opportunity to view though
6 that prior version of the minutes before the
7 verbatim was added?

8 A. Yes.

9 Q. Okay. What was your understanding at that time as
10 to why that verbatim was proposed to be added?

11 A. That Ms. Lockaby had requested it.

12 Q. Okay. How do you understand it was actually
13 drafted? Was the city clerk in charge of doing
14 that? The verbatim section, that is.

15 A. I guess. I mean, I can't say yes or no because --
16 I would guess so.

17 Q. Okay. Not looking at the verbatim section that
18 we've been talking about, but looking at the rest
19 of the approved minutes, have you been able to spot
20 any inaccuracies, anything that was not truthful
21 that is encompassed in those minutes?

22 A. No, they're correct.

23 Q. Okay. How much time did you have to view that
24 added section, the verbatim section, before or
25 during the business meeting following this meeting

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1 in question?

2 A. The portion that Ms. Lockaby asked to be --

3 Q. Correct.

4 A. As far as I recall, that wasn't part of my packet.

5 Q. So at the subsequent business meeting this version
6 of the proposed minutes was not part of the packet
7 provided to you?

8 A. Where it says Other Business?

9 Q. Yes, ma'am.

10 A. Down to where it says, "On written request from
11 Councilmember Lockaby," and then it begins the
12 verbatim.

13 Q. Okay.

14 A. And then it picks up here with those.

15 Q. Correct.

16 A. Yes.

17 Q. When the next business meeting started, the section
18 you just identified was not in your packet?

19 A. No.

20 Q. Okay. When did you understand a version was
21 submitted to include that section?

22 A. I don't recall.

23 Q. Was a vote taken at the meeting we're talking about
24 now, the meeting that follows, --

25 A. Yes.

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1 Q. -- that these minutes concern, was a vote taken to
2 approve the version of the minutes that you had in
3 your packet?

4 A. Yes.

5 Q. Okay. And did you vote to approve those minutes?

6 A. Yes.

7 Q. Okay. Did -- was there ever a vote to approve
8 minutes for the meeting that we've been discussing,
9 the February meeting, either at the subsequent
10 meeting in February or at a later business meeting
11 that looks like the version that's before you?

12 A. Okay. What you're asking is if we saw these
13 minutes before the meeting, is that what you're
14 asking?

15 Q. I was asking you earlier if you received a copy of
16 what you have before you in the packet, and you
17 indicated that the section that we're calling the
18 verbatim section was not in your packet; is that
19 correct?

20 A. Not that I can recall.

21 Q. Okay. So my question is, at any point, at that
22 business meeting or at a subsequent business
23 meeting, was there ever a motion to approve the
24 minutes of the February 16 meeting like you see
25 before you?

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JANICE CURTIS 5/7/2019

1 A. With this verbatim in here?

2 Q. Yes, ma'am.

3 A. Not that I recall.

4 Q. Okay. So I'm assuming then, and correct me if I'm
5 wrong, you've never voted to approve these
6 minutes?

7 A. Yes, sir, we did vote to approve the minutes.

8 Q. And that would be the minutes that were in your
9 packet that did not have the verbatim in there?

10 A. I don't recall.

11 Q. Okay. All right. Looking now just at the verbatim
12 that's printed in front of you and thinking back to
13 that February meeting that's in question in this
14 litigation, do you see anything inaccurate about
15 that verbatim?

16 A. No, sir.

17 Q. Okay. Do you recall at any point ever asking the
18 madam city clerk at the time to make any changes to
19 --

20 A. No, sir.

21 Q. Okay. At the meeting in question do you recall how
22 the votes on the motion before council was resolved
23 after Ms. Lockaby left the meeting?

24 MS. SPRUILL: Object to the form of the question.

25 A. I don't understand the question. What motion are

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1 you talking about?

2 Q. If you wouldn't mind looking at the proposed
3 events, I believe it was on motion from a council
4 member to discuss curbside replacement on Aster
5 Drive and an application for a GLDTC permit. Do
6 you recall how the motion was resolved after Ms.
7 Lockaby left the meeting?

8 A. I did not. Could you point me in that direction?
9 And you said a curb cut on Aster?

10 Q. Yes, ma'am. I don't have the minutes in front of
11 me, but I do believe it was on motion from a
12 council member to discuss application to be made by
13 the city manager concerning Aster Drive and
14 curbside replacement pursuant to a GLDTC
15 application.

16 MS. SPRUILL: Would it be okay if she handed the exhibit
17 back to you so you could show her?

18 MR. SMITH: I'll be happy to, yeah.

19 THE WITNESS: Sure.

20 BY MR. SMITH: (Resuming)

21 A. This one?

22 Q. Uh-huh. And my question, Mayor Curtis, is do you
23 recall how that motion was resolved after my
24 client, Ms. Lockaby, left the meeting?

25 A. I don't.

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1 Q. Okay.

2 A. I do not recall. And this doesn't say a curb cut.
3 This says a curb replacement.

4 Q. Yes, ma'am. You're right. Do you -- did you at
5 the time consider storm water issues to be
6 important issues for Greenville County, or perhaps
7 the city of Simpsonville individually?

8 A. Storm water issues are important, yes.

9 Q. Okay. Do you recall how you were thinking about
10 resolving those issues during that meeting?

11 A. No, sir. I mean, storm water as far as I can
12 recall never even was on the agenda.

13 Q. Okay. Do you know of that location, Aster Drive?

14 A. I know where Aster Drive is.

15 Q. Okay.

16 A. It's in Poinsettia, yes.

17 Q. Okay. Did you have an understanding about what may
18 have been proposed on the agenda for this meeting
19 concerning Aster Drive?

20 A. Curb replacement. That's what it says, curb
21 replacement.

22 Q. Okay. And did you have any notions about how you
23 might support or not support a motion made to do
24 that replacement?

25 A. No, I had not made a decision one way or the other.

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1 I mean -- no.

2 Q. Would your support for curb replacement at that
3 location have been contingent at all upon any
4 support coming from any other council member?

5 A. No, sir.

6 Q. Did you consider the issue of curb replacement on
7 Aster Drive to be a matter that was appropriate for
8 city council to consider?

9 A. Curb replacement for the GLDTC application? Yes.

10 Q. Okay. Is that issue, curb replacement, an issue
11 with which reasonable minds can disagree?

12 A. Curb replacement, of course.

13 Q. Did you have any disagreements with my client
14 concerning storm water drainage, curb replacement
15 or GLDTC applications?

16 A. No, sir.

17 Q. Okay.

18 A. We never discussed it.

19 Q. All right. Do you recall at any other point in
20 that meeting where you indicated you may eject
21 another member of council?

22 A. I do.

23 Q. And who were you referring to that -- that other
24 person was?

25 A. Mr. Taylor Graham.

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JANICE CURTIS 5/7/2019

1 Q. Okay. And why did you indicate you were
2 considering ejecting him?

3 A. I don't recall, but -- I don't recall what he had
4 done.

5 Q. Okay. Do you recall, looking back now during your
6 time as mayor on council, any other time besides
7 the time you just mentioned and my client where you
8 mentioned you may have a council member ejected?

9 A. No, sir. Because this was only my second meeting,
10 second business meeting.

11 Q. Okay. And as a point of fact, did you at that
12 meeting have that other individual ejected from the
13 meeting?

14 A. No, sir.

15 Q. Okay.

16 A. He was called into order.

17 Q. Okay. How in your mind does being called into
18 order effectively resolve your concerns about being
19 ejected or not?

20 A. Well, I called him into order, and he appealed my
21 decision. There was a vote taken because he wanted
22 to appeal my decision, and his appeal failed;
23 therefore, he was called into order.

24 Q. Okay. Was Officer Randolph present when that was
25 occurring?

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1 A. He was our sergeant-at-arms this particular night.

2 Q. Okay. During the scenario you just described, did
3 you ask Mr. Randolph to approach?

4 A. When?

5 Q. When you were considering the appeal from the other
6 council member prior.

7 A. No, sir.

8 Q. Why did you decide not to ask Mr. Randolph to
9 approach when you were considering that appeal?

10 A. Because he had appealed, I was waiting for the vote
11 of council.

12 Q. Okay.

13 A. I had not made a decision.

14 Q. Okay. Do you recall any feedback provided to you
15 by any council member during the recess that
16 followed my client leaving?

17 A. No, sir.

18 Q. Approximately how long was that recess, do you
19 recall?

20 A. Maybe five minutes. Less than ten.

21 Q. Okay. Do you recall if you spoke with anyone
22 during that recess?

23 A. There was no discussion.

24 Q. You spoke with no one during that recess?

25 A. No one. There was no discussion.

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1 Q. Okay. Do you recall if you spoke with any council
2 member about my client leaving that meeting at any
3 point on that evening?

4 A. No, sir.

5 Q. Have you discussed that at any point with any
6 individual on council after that meeting but before
7 the next meeting?

8 A. No, sir.

9 Q. Okay.

10 MR. SMITH: If you don't mind, can we take a recess for
11 about five minutes?

12 MS. SPRUILL: Sure.

13 (Off the record from 2:03 p.m. to 2:11 p.m.)

14 BY MS. SMITH: (Resuming)

15 Q. All right, Ms. Curtis, we're back on the record.

16 A. Yes.

17 Q. I only have a few more questions for you.

18 A. Okay.

19 Q. Let's start with going back again to that meeting
20 that immediately followed the meeting that's in
21 question in this case and the minutes concerned.

22 A. The last Tuesday of the month.

23 Q. Okay. Great. At that meeting was there any other
24 member of council who asked for any changes to the
25 proposed minutes?

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JANICE CURTIS 5/7/2019

1 A. No. I recall Ms. Lockaby said that she could not
2 vote for the minutes because she had -- she was not
3 there for the entire time, but that was the only
4 thing that I can recall about these minutes.

5 Q. Okay. All right. Do you recall if at any other
6 business meeting in your time as mayor, after this
7 meeting in question, if there was any motion by
8 anyone to change these approved minutes?

9 A. Yes.

10 Q. Okay. Do you recall when that was?

11 A. I do not recall when it was. No, sir.

12 MS. SPRUILL: Wait, I just have a question just to
13 clarify. Are we talking about these minutes or any
14 minutes?

15 MR. SMITH: Those minutes.

16 A. No, sir. Not about these minutes.

17 Q. Okay. Okay. So there was no motion made by anyone
18 to change these approved minutes --

19 A. No, sir.

20 Q. -- at any later date?

21 A. No, sir.

22 Q. Okay. Is there anything that you now upon
23 reflection wish you had added to these proposed
24 minutes before they were approved?

25 A. No, sir.

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1 Q. Okay. Looking back on this meeting in question, do
2 you have any regrets or concerns from that meeting?

3 A. As far as regrets go, no, sir.

4 Q. Okay. Okay. I don't have any more questions. Any
5 questions Ms. Spruill has, please answer.

EXAMINATION

6
7 BY MS. SPRUILL:

8 Q. I just have a few.

9 A. Okay.

10 Q. Just because I know I got a little confused as we
11 went through that deposition.

12 A. Okay.

13 Q. With respect to any dates or votes of council,
14 would you defer to what is in the approved minutes
15 of the Simpsonville city council as to when things
16 occurred or what votes might have been?

17 A. Yes, of course.

18 Q. You referenced "our goals" at some point, referring
19 to business and civility in Simpsonville. When you
20 said "our," was that in reference to all of
21 council?

22 A. Yes.

23 Q. With respect to Exhibit 1 in front of you, do you
24 have any reason to believe those are not the
25 approved version of the minutes for that meeting of

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1 Simpsonville city council?

2 A. No, ma'am.

3 Q. Do you have any reason to believe the transcription
4 within that set of minutes is inaccurate?

5 A. No, ma'am.

6 Q. Do the minutes speak for themselves?

7 A. Yes, ma'am.

8 Q. And that would include the minutes where those
9 minutes were approved; is that correct?

10 A. Yes, ma'am.

11 Q. Do you have any knowledge of any vote, other than
12 the one where these minutes show up as being
13 approved, about these minutes?

14 A. No, ma'am.

15 Q. With respect to when Council Member Lockaby
16 actually stood up and left the meeting, do you
17 recall if that happened before or after you asked
18 for a recess?

19 A. She -- Ms. Lockaby left -- she stood up and
20 gathered her things, and then I called for a
21 recess.

22 Q. Okay. Had she started to walk away from the dais
23 when you called for the recess?

24 A. No, she was just gathering her things.

25 Q. Okay. And would the minutes have reflected

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1 anything that happened during the recess?

2 A. No. No, ma'am.

3 Q. That's all I have.

4 MR. SMITH: Okay. We're good.

5 (Whereupon, the deposition in the above-entitled matter was
6 concluded at 2:16 p.m.)

7 (*This transcript may contain quoted material. Such
8 material is reproduced as read or quoted by the speaker.)

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ELECTRONICALLY FILED - 2019 May 10 11:54 AM - GREENVILLE - COMMON PLEAS - CASE#2018CP2300731

1 STATE OF SOUTH CAROLINA)
) CERTIFICATE
 2 COUNTY OF RICHLAND)

3

4 Be it known that I, Robin K. Reibold, do hereby
 5 certify that I did have JANICE CURTIS, appear before me and
 I took the foregoing deposition at the time and place
 aforesaid;

6

7 That I was then and there a notary public in and
 for the State of South Carolina-at-Large;

8 That by virtue thereof, I was duly authorized to
 administer an oath;

9

10 That the witness first duly sworn, through an
 interpreter, to testify to the truth, the whole truth, and
 nothing but the truth;

11

12 That the foregoing deposition was taken down by me
 and reduced to written form by means of Stenomask with
 backup;

13

14 That the foregoing transcript consisting of 49
 pages represents a true, accurate and complete transcript
 of said deposition to the best of my skill and ability;

15

16 That this transcript may contain quoted material;
 said material is transcribed as read or quoted by the
 speaker.

17

18 That I am neither employed by nor related to any of
 the parties in this matter nor their counsel; nor do I have
 any interest, financial or otherwise, in the outcome of
 this action.

19

20 Witness my hand and seal this 9th day of May, 2019.

21

22

Robin K. Reibold, CVR
 Notary Public for South Carolina
 My Commission Expires: 4-28-21

23

24

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**Minutes of the
Simpsonville City Council
Business Meeting
February 9, 2016
6:30 p.m.
City Council Chambers – 118 N.E. Main Street**

CALL TO ORDER – Mayor Curtis

COUNCIL PRESENT – Councilmember Gooch, Councilmember Graham, Councilmember Hulehan, Councilmember Braswell, Councilmember Cummings, Councilmember Lockaby, Mayor Curtis

PLEDGE OF ALLEGIANCE

PUBLIC HEARING – Greenville County Redevelopment Authority 2016 Program Year Annual Action Plan

APPROVAL OF MINUTES

- Motion by Councilmember Lockaby with a 2nd by Councilmember Gooch to approve minutes from January 12, 2016 and January 26, 2016. Motion carried unanimously.

SPECIAL RECOGNITION – Coach Greg Porter, 2015 SC Football Coach of the Year

CITIZEN COMMENTS - None

COUNCIL COMMENTS

- Hillcrest High School Scholastic Achievements – Councilmember Graham
- Hillcrest High School Athletic Achievements – Councilmember Graham
- Budget Comments – Councilmember Gooch
- Update on the Grandview and Davenport Intersection – Councilmember Gooch
- Motion by Councilmember Graham with a 2nd by Councilmember Lockaby to appeal Council Comments to allow further comments on non-voting items. Roll call vote taken, Yes=2, No=5. Councilmembers Gooch, Hulehan, Braswell, Cummings and Mayor Curtis voting No. Motion failed.

BUSINESS

a. *Matters Referred by the Planning Commission*

- Motion by Councilmember Graham with at 2nd by Councilmembers Cummings and Braswell pass 2nd Reading of AXZ-2016-02, Proposed Annexation at 700 Fairview Road. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmembers Gooch and Braswell to pass 1st Reading of TX-2016-01, Electronic Message Display Signs in the R-OI District. Motion carried unanimously.
- SP-2016-03, Harrison Bridge Center ID, Major Change, Withdrawn.



b. **Other Business**

- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings to pass Resolution 2016-01, GCRA Annual Action Plan. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to pass Resolution 2016-02, Safety Policy. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to appoint Stephanie Kelley to the Election Commission. Motion passed unanimously.
- Motion by Councilmember Lockaby with a 2nd by Councilmember Graham to accept the bid for Wetlands Remediation from Apex Companies. Motion passed unanimously.
- Motion by Councilmember Graham with a 2nd by Councilmember Hulehan to accept the Mutual Aid Agreements as written. Motion passed unanimously.
- Motion by Councilmember Gooch with a 2nd by Councilmember Cummings giving City Administrator, David Dyrhaug permission for completing application with GLDTC for curb replacement at Aster Drive.
- On written request from Councilmember Lockaby:
 Councilmember Lockaby was recognized by Mayor Curtis and had the floor.
 Councilmember Lockaby: Are we opening a can of worms? Cause if we fix this...
 Mayor Curtis: Who are you talking to?
 Councilmember Lockaby: I'm looking at Mr. Dryhaug.
 Mayor Curtis: Well you didn't identify anyone...excuse me.
 Councilmember Lockaby: Mr. Dryhaug, I'm looking straight at you. Are we opening a can of worms when we do this? I'm just asking the question.
 Mr. Dyrhaug: I don't have an answer for that, but I...
 Councilmember Lockaby: Well.
 Mr. Dyrhaug: The issue is that so when this road was resurfaced that the reveal on the curb was diminished and that's caused an issue of storm water coming from the road onto private properties.
 Councilmember Lockaby: And we have storm water issues all over the city.
 Mayor Curtis: [Not intelligible]
 Councilmember Lockaby: I'm still speaking, please.
 Mayor Curtis: Yes, but you're arguing the point and this isn't a time for argument. You can ask questions, but this isn't argument.
 Councilmember Lockaby: I'm not arguing. I'm, I'm stating a fact that we have storm water issues all over the city. Is this opening a can of worms?
 Mayor Curtis: Well, ask our attorney.
 Councilmember Lockaby: I was asking Mr. Dryhaug, I haven't even gotten to the attorney yet.
 Mayor Curtis: Well, okay, that's fine. Mr. Holmes, could you...
 Councilmember Lockaby: I'm not finished.
 Mayor Curtis: You are now. [Gavels] Thank you. Mr. Holmes...
 Councilmember Lockaby: I am not.
 Mayor Curtis: Yes, you are. Mr. Holmes, could you...
 Councilmember Lockaby: [talks over, not intelligible] ...we had to do...
 Mayor Curtis: [Gavels 3 times] Order. Order. Order.
 Councilmember Lockaby: You going to throw me out?
 Mayor Curtis: [Gavels] Order.
 Councilmember Lockaby: You going to threaten to throw me out?
 Mayor Curtis: Keep it up and you'll find out.
 Councilmember Lockaby: I guess I will.
 Mayor Curtis: Okay.

Councilmember Lockaby: I'm keeping it up.

Mayor Curtis: [Gavels] Mr. Holmes will you please answer her question? Thank you.

Councilmember Lockaby: I know if you want to answer her question, I haven't asked one.

Mayor Curtis: Can I get the police officer from the back to enter the front, please?

Officer: Need her out?

Mayor Curtis: I need her out.

Officer: Councilmember Lockaby, will you come with me, please?

Mayor Curtis: We'll take a five minute recess. [Gavels.]

Councilmember Lockaby leaves the council chamber at 7:30pm.

Brief recess until 7:33pm when meeting resumed.

- Motion by Councilmember Gooch to withdraw original motion, 2nd by Councilmember Cummings. Motion to withdraw passes by vote of Yes=6, No=0. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to enter into agreement with Seating Solutions and TRZ Management for Amphitheater Chairs. Motion passed with vote of Yes = 5, No = 1. Councilmember Gooch voting No.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to accept the Budget Workshop Dates presented by City Administrator, David Dyrhaug. Motion passed with vote of Yes = 6 No = 0.
- Motion by Councilmember Cummings with a 2nd by Councilmember Graham to pass 1st Reading of Ordinance, 2016-01, Timing of Taking Office. Motion passed with vote of Yes = 6, No =0.
- Motion by Councilmember Hulehan with a 2nd by Councilmember Gooch to move the Council Rules of Procedure item back to the next workshop session for further discussion. Motion passed with vote of Yes = 6, No = 0.
- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to change the Qualifications for Serving on Boards and Commissions adding that you must be a registered voter. Motion by Councilmember Gooch to withdraw the motion, 2nd by Councilmember Hulehan. Motion withdrawn.
- Motion by Councilmember Graham with a 2nd by Councilmember Braswell to have (4) four Orientation/Training sessions this year for council inviting MASC and ACOG to conduct the training. Vote taken, Yes=2, No=4. Councilmembers Gooch, Hulehan, Cummings and Mayor Curtis voting No. Motion failed.

EXECUTIVE SESSION

- Motion by Councilmember Gooch with a 2nd by Councilmember Hulehan to go into Executive Session for the receipt of legal advice on matters covered by the attorney-client privilege and pertaining to contractual arrangements. Motion carried with vote Yes = 6, No = 0.
- Motion by Councilmember Graham with a 2nd by Councilmembers Cummings and Hulehan to return from Executive Session – No action taken, no vote taken.

ADJOURNMENT

- Motion by Councilmember Gooch with a 2nd by Councilmember Graham to adjourn. Motion carried with vote of Yes =6, No = 0.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-23-00731

Sylvia Lockaby,

Plaintiff,

vs.

**City of Simpsonville, Janice Curtis, and
Adam Randolph,**

Defendants.

MOTION TO RECONSIDER

YOU WILL PLEASE TAKE NOTICE that Plaintiff Sylvia Lockaby (hereinafter “the Plaintiff”) moves before this court pursuant to Rules 52 and 59, SCRPC, for an order reconsidering, altering, amending, and/or clarifying the order filed July 11, 2019, that granted summary judgment on the Plaintiff’s claims against Defendants in the above-captioned action (hereinafter “the Order”).

The Plaintiff so moves on the following grounds:

1. The Defendants are not entitled to the summary judgment ruling it received in this case. “[S]ummary judgment may be rendered only when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of the law.” Folkens v. Hunt, 290 S.C. 194, 196, 348 S.E.2d 839, 841 (Ct. App. 1986). “All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute

as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” Nelson v. Charleston County Parks & Recreation Comm., 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). Under that standard, the Defendants are not entitled to summary judgment.

- a. The deposition transcripts of the parties, including Plaintiff, provide at least a scintilla of evidence, and indeed more, to support her claims, making summary judgment improper.
 - b. Further inquiry into the facts is necessary to determine, among other things, the voluntariness (or lack thereof) of Plaintiff’s leaving the incident in question, whether there existed enough time for Plaintiff to exercise any right of appeal, and facts necessary to determine whether Plaintiff was being disorderly or exhibited any behavior which would entitle Defendants to have Plaintiff seized and removed. There were genuine issues of material fact here.
 - c. Inferences arising from the minutes concerning Plaintiff being afforded time to exercise an appeal, among other things, were not construed most strongly against Defendants, the moving party, as they were required to be.
2. The Robert’s Rules of Order did not (and cannot) create an administrative appeal obligation that could bar Plaintiff’s claims here.
- a. The Order provides that Plaintiff “did not appeal the ruling at issue in this case, and therefore her claims are barred for failure to exhaust internal remedies.” Order at 7. Assuming the statements by Defendant Curtis in the approved minutes of the Simpsonville City Council meeting in question

provide constitute a “ruling”¹, there is no indication Plaintiff had any time to appeal the decision by Curtis (“I need her out”) before Defendant Randolph began carrying out Defendant Curtis’ directive to remove the Plaintiff. See Minutes of February 9, 2016 Council at 3 (attached to Plaintiff’s Amended Complaint, among other places in the record). The lack of any statement from Plaintiff between the statements of Defendants Curtis and Randolph is conspicuous and creates a reasonable inference there was no opportunity for Plaintiff to object, much less lodge a formal appeal. Furthermore, the approved minutes of the Simpsonville meeting in question reflect no indication by Defendant Curtis of the “offense” committed by Plaintiff, much less action by the “body” to constitute a lawful penalty against Plaintiff. See Minutes. No vote was taken, nor was any other parliamentary procedure followed. Id. Not only was Plaintiff denied an opportunity to understand her offense against city council, but she also wasn’t afforded an opportunity to say a word (much less appeal the phantom determination/“ruling”) before Defendant Curtis ordered her ejection. Plaintiff cannot be denied recovery in this case as a matter of law for her supposed failure to exhaust her alleged administrative remedy: the Robert’s Rules of Order right of appeal.

- b. Robert’s Rules of Order do not provide for a single member of a body, even one presiding, to decree the ejection of a member from a meeting.

¹ Robert’s Rules of Order provides no definition of “ruling.”

c. Regardless, the Robert's Rules of Order cannot create an administrative remedy as a matter of law. "The doctrine of exhaustion of administrative remedies only comes into play when a litigant attempts to invoke the original jurisdiction of a circuit court to adjudicate a claim based on a statutory violation for which the legislature has provided an administrative remedy." Thomas Sand Co. v. Colonial Pipeline Co., 563 S.E.2d 109, 349 S.C. 402 (S.C. App., 2002)(quoting Med. Mut. Liab. Ins. Soc. of Md. v. B. Dixon Evander & Assocs., 92 Md.App. 551, 609 A.2d 353 (1992)). A litigant need not exhaust administrative remedies where "there are no administrative remedies for the wrongs it assertedly suffered." Id. Although the initial interruption by Defendant Curtis on page 2 of the approved Minutes can be tacked as the beginning of the censorship in this matter, it is the seizure on page 3 of the approved Minutes that provides Plaintiff with standing to bring this action for violations of her civil rights. See Minutes 2-3. In this action, Plaintiff is seeking compensatory and punitive Damages against Defendants. Although the latest edition of the Robert's Rules were adopted by ordinance, as the Order provides, neither those Rules nor the ordinances of Defendant City of Simpsonville, contain any procedure for appeal of the violation of rights guaranteed by the United States and South Carolina Constitutions. Robert's Rules of Order are not and do not contain an administrative remedy.

The Maryland Court of Special Appeals in Med Mutual, cited by the Thomas Sand Court above, held that for the appellant in that case to

successfully challenge respondent's standing to bring that case on the theory of failure to exhaust administrative remedies, appellant would have to show "the present case is, at its core, a claim of statutory violation." Medical Mut. Liability Ins. Soc. of Maryland v. B. Dixon Evander & Associates, Inc., 609 A.2d 353, 359, 92 Md.App. 551, 564 (Md. App., 1991). Here, Plaintiff has not asserted claims of violations of the Simpsonville Code of Ordinances or the latest edition of the Robert's Rules of Order. Plaintiff seeks redress for the violation of her civil rights, which may have begun when she had the floor and was interrupted, but were certainly cemented when she was illegally seized for speaking about a matter of public concern. A review of the minutes reveals the meeting was adjourned after Defendant Randolph ordered Plaintiff to follow him, so (even if there were an appropriate administrative remedy which the city council could adjudicate) it was impossible to for Plaintiff to avail herself of that remedy as the public body was no longer presiding. Plaintiff respectfully asks the Court to reconsider its holding that she failed to exhaust her administrative remedies in this matter.

3. Plaintiff's claims are not barred by legislative immunity.
 - a. The Order provides "the action in question was legislative in nature" such that Defendants were entitled to absolute legislative immunity and therefore could not have liability under 42 U.S.C. § 1983 or the South Carolina Tort Claims Act. Order at 9. Mayor Curtis' directive to Officer Randolph to remove the Plaintiff was not a legislative act. A brief review of the

jurisprudence on absolute legislative immunity reveals the action taken by Defendant Curtis to seize Plaintiff and remove her from the meeting in question, could not be legislative in nature, as a matter of law.

In United States v. Gravel, the United States Supreme Court considered whether an aide to then U.S. Senator Mike Gravel would be protected from liability for the disclosure and publishing of classified material. Gravel, 408 U.S. 606, 92 S.Ct. 2614, 33 L.Ed.2d 583 (1972). If the Court determined his private publication of the classified material, in aide of Senator Gravel's wishes, was legislative in nature, the aide would face no liability. Id. "Legislative acts are not all-encompassing ... they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." Gravel 408 U.S. at 625. The Supreme Court noted that the courts have extended legislative acts "to matters beyond pure speech or debate in either House, but 'only when necessary to prevent indirect impairment of such deliberations.'" Id. (citing United States v. Doe, 455 F.2d 753 (CA1 1972)).

The United States Fourth Circuit Court of Appeals agrees that "not all actions undertaken by local governmental bodies that have legislative responsibilities are necessarily 'legislative.'" Roberson v. Mullins, 29 F.3d 132 (4th Cir., 1994)(citing Scott v. Greenville County, 716 F.2d 1409, 1423

(holding that county council's action in delaying consideration of zoning permit was not legislative); Trevino v. Gates, 17 F.3d 1189, 1191 (9th Cir.1994) ("[N]ot all governmental acts by ... a local legislature ... are necessarily legislative in nature.") (quotation omitted); Brown v. Griesenauer, 970 F.2d 431, 437 (8th Cir.1992) (using same quotation); see also Forrester v. White, 484 U.S. 219, 224, 108 S.Ct. 538, 542, 98 L.Ed.2d 555 (1988) (stating that the characterization of an action undertaken by an official or a governmental body is not determined by the title of the official or body); Harlow v. Fitzgerald, 457 U.S. 800, 810-11, 102 S.Ct. 2727, 2734-35, 73 L.Ed.2d 396 (1982) (same); Butz v. Economou, 438 U.S. 478, 511, 98 S.Ct. 2894 2913, 57 L.Ed.2d 895 (1978) (same). Rather, a local governmental body only acts in a legislative capacity when it engages in the process of 'adopt[ing] prospective, legislative-type rules.'" Roberson at 135 (citing Front Royal, 865 F.2d at 79 (quotation omitted); Scott, 716 F.2d at 1423.) The Fourth Circuit held in that case that the county board's termination of Roberson, a county employee, was "plainly unrelated to 'adopt[ing] prospective, legislative-type'" and thus was not a legislative action such that the board members could not act in their legislative capacity when they participated in it. Id. (citing Front Royal, 865 F.2d at 79 (quotation omitted)). In this case, it is undisputed that councilmembers were discussing a matter of public concern (storm water drainage and curb replacement) in the physical area where the Simpsonville City Council had legislative responsibilities (the city limits of Simpsonville). See Minutes. It

is also undisputed that it was during this discussion (where the minutes reflect Plaintiff was given the floor by Defendant Curtis) between Plaintiff and the city administrator, that Defendant Curtis interrupted and ordered Plaintiff's seizure and removal from the meeting. See Id. It is the interruption and seizure order by Defendant Curtis, not any action taken by the legislative body (like what occurred in virtually all of the cited legislative immunity authority above) that is complained of and must be considered a legislative act in this matter to provide Defendants immunity. Based upon the foregoing authority, the actions by Defendants cannot be considered legislative acts entitling them to absolute legislative immunity in this matter.

- b. The Order provides “[q]uite simply, ‘legislatures may discipline members for speech with the corollary immunity from executive or judicial reprisal for doing so. Id. **Under this authority**, the Court grants summary judgment as to Lockaby’s claim under 42 U.S.C. §1983.” Order at 10 (emphasis added). Respectfully, the Court’s reliance on Whitener v. McWatters, 112 F.3d 740 (4th Cir. 1997), is misplaced. “This case concerns the vote of the Board of Supervisors in policing its own ethics violations, obviously a core legislative activity.” Whitener at 741. It is true that Whitener was disappointed with the outcome of straw vote. Id. “While he was arguably disciplined for speech, it was legislative speech, which is protected from executive² or, in the United States, judicial interference, but not from the

² In the context of this free speech case, it is relevant to point out that censorship at issue in this case was initiated by the Defendant Curtis, mayor of the City of Simpsonville.

legislative body's judgment.” Id. at 744. In this case, it is undisputed that that it is the actions of individual Defendants Curtis and Randolph that give rise to liability for all defendants, not the actions of the city council. There was no vote in this case.

The Whitener Court acknowledges the narrow scope of its holding: “[e]ven if, at some level, there is a judicially enforceable First Amendment constraint on a legislature's power to discipline one of its members, we certainly do not approach it in this case.” Id. at 745. Arguably this case could fall within that First Amendment constraint; however, this case does not concern a use of the legislature’s power, but instead a mayor’s. Furthermore, the Fourth Circuit Court of Appeals finds Whitener was disciplined for his lack of decorum, “not for expressing his view on policy.” Id. “We cannot conclude that the Loudoun County Board of Supervisors was without power to regulate uncivil behavior, even though it did not occur during an official meeting. Such abusiveness, even when it occurs ‘behind the scenes,’ can threaten the deliberative process³.” Id. The Defendants’ have maintained the position first stated in their answer to the amended complaint, wherein they deny Plaintiff’s allegation that she was not disorderly during the meeting in question. See Defendants’ Answer at 2. Consequently, there is a material fact in issue to determine whether Whitener’s application to this case is appropriate assuming the Court

³ Regardless of Defendants actions, it is the allegedly illegal censorship and seizure of Plaintiff and subsequent intimidation and chilling of honest dialogue in this matter that is mostly likely to harm the deliberative process of the city council.

believes the lack of legislative action in this case is not distinguishable.

Regardless, the Court can distinguish Whitener from this matter such that summary judgment relevant to any claim⁴ in this matter is not appropriate.

4. No one had to touch the Plaintiff in order for her to have been seized as defined under the Fourth Amendment to the Constitution of the United States.
5. Mayor Curtis does not have a duty to singlehandedly decree the ejection of a councilmember from a meeting.
6. Officer Randolph does not have a duty to follow an order from someone who is simply a member of city council.
7. It was error for the court to conclude that the only factual conclusion to be drawn from the evidence was that Mayor Curtis and Officer Randolph were acting in the performance of their duties.
8. The court granted summary judgment on all the claims in this case, including those that sound under 42 U.S.C. § 1983, on the basis of provisions of the South Carolina Tort Claims Act. This was error, as the South Carolina Tort Claims Act does not change or affect liability under 42 U.S.C. § 1983.
9. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action. Further, the Plaintiff specifically incorporates all argument she made at previous hearings and in her previous memorandum in this

⁴ Plaintiff has three total causes of action in this case, two of which (the torts of gross negligence and false imprisonment) are subject to the South Carolina Tort Claims Act. Consequently, if the Court believes reconsideration of its decision is appropriate only to the non-Tort Claims Act immunity analysis, Plaintiff's first cause of action under 28 U.S.C. § 1983 would survive. The Tort Claims Act immunity analysis is virtually indistinguishable from the common law legislative absolute immunity jurisprudence discussed substantially herein.

case. Further, the Plaintiff reserves the right to submit memoranda in support of this motion.

Pursuant to Rule 11, SCRPC, there is no duty of consultation prior to this motion, as this is a motion to reconsider and consultation in advance about the substance of this motion would have served no useful purpose.

Respectfully submitted,

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Columbia, South Carolina
July 11, 2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2018-CP-23-00731

Sylvia Lockaby,
Plaintiff,

vs.

City of Simpsonville, Janice Curtis, and
Adam Randolph,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFF’S MOTION TO
RECONSIDER**

Plaintiff Sylvia Lockaby (hereinafter “the Plaintiff”) hereby submits this memorandum of law in support of her previously-filed motion to reconsider pursuant to Rules 52 and 59, SCRPC, for an order reconsidering, altering, amending, and/or clarifying the order filed July 11, 2019, that granted summary judgment on the Plaintiff’s claims against Defendants in the above-captioned action (hereinafter “the Order”).

Summary Judgment Standard

Summary judgment is proper only when it is clear there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 443 S.E.2d 392 (1994). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Id.

Plaintiff brought this action for violation of her civil rights, specifically her First (freedom of speech) and Fourteenth Amendment (right to be free from unlawful seizure), when she, an elected official, was seized and removed from a meeting of the Defendant City of Simpsonville.

See Amended Complaint 2-8. Plaintiff pled that she was speaking about a matter of public concern (paragraph 28) and was seized and removed from the meeting without probable cause (paragraph 31). Id. at 4. Defendants admit that the topic Plaintiff was addressing (curb replacement and storm water issues) is a matter of public concern but deny that she was removed seized and removed from the meeting without probable cause to do so. See Answer to Amended Complaint at 4. Consequently, the parties agree that Plaintiff's speech was of category of highest constitutional protection under the First Amendment¹ but the parties don't agree that probable cause existed for Defendants seizure of Plaintiff.

“The fundamental question in determining whether an arrest is lawful is whether there was ‘probable cause’ to make the arrest.” Wortman v. Spartanburg, 310 S.C. 1, 425 S.E.2d 18 (S.C. 1992)(citing Jones v. City of Columbia, 301 S.C. 62, 389 S.E.2d 662 (1990). “Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise.” Gathers v. Harris Teeter Supermarket, 282 S.C. 220, 317 S.E.2d 748 (Ct.App.1984). “In South Carolina, the issue of probable cause is a question of fact and ordinarily one for the jury.” Wortman at 4 (citing Jones, 301 S.C. at 65, 389 S.E.2d at 663). In Wortman, Wortman maintained an action for false arrest stemming from his warrantless arrest for playing a gambling game at a public place in violation of state law. Id. at 1. Summary judgment was granted to the defense in that case and Wortman appealed. Id. In addition to providing that the grant of summary judgment on immunity grounds was inappropriate, the Supreme Court of South Carolina

¹ Leafletting and commenting on matters of public concern are classic forms of speech that lie at the heart of the First Amendment, and speech in public areas is at its most protected on public sidewalks, a prototypical example of a traditional public forum. See, e.g., Boos v. Barry, 485 U.S. 312, 322, 108 S.Ct. 1157 1164, 99 L.Ed.2d 333 (1988); United States v. Grace, 461 U.S. 171, 180, 103 S.Ct. 1702, 1708-1709, 75 L.Ed.2d 736 (1983). Schenck v. Pro-Choice Network W. New York, 519 U.S. 357, 117 S.Ct. 855, 137 L.Ed.2d 1 (1997).

held “we also discern that a disputed question of material fact exists as to whether the City had probable cause to arrest Wortman.” Id. at 4.

In Jones, the South Carolina Supreme Court stated the Palmetto state’s law regarding whether probable cause determination areas questions of fact, of law, or a mix of the two: “South Carolina follows the minority rule that the issue of probable cause is a question of fact and ordinarily one for the jury.” Jones at S.C. 65 (See Gathers, 282 S.C. 220, 317 S.E.2d 748 (Ct.App.1984); Parrott v. Plowden Motor Co., 246 S.C. 318, 143 S.E.2d 607 (1965). “The majority rule is that the issue of whether there is probable cause is a mixed question of law and fact, to be decided in some instances only by the judge and in others by a combination of judge and jury.” Id. See 35 C.J.S. False Imprisonment § 59 at 761 (1960); 5 Am.Jur.2d Arrest § 49 at 741 (1962). “We adhere to our present rule.” Id.

It is inappropriate to award summary judgment to Defendants in this matter for several reasons, most of which are stated in the filed motion to reconsider, but primarily because there exist issues of material fact regarding whether Defendants had probable cause to seize Plaintiff. Please note that the record of this matter is devoid of any rationale from Defendants as to why the seizure was appropriate in this case. Defendants have vociferously contested that they are immune from liability and that because Plaintiff failed to exercise a supposed right of appeal² under the Robert’s Rules of Order, Plaintiff lacks standing to bring her claims³. But Defendants have not defended this matter on the basis that probable cause existed for the seizure of Plaintiff as a result

² Plaintiff’s motion to reconsider states that the minutes of the public meeting in question show that Plaintiff had no time to raise her supposed administrative appeal, an issue of material fact or a reasonable inference that also show why the Court’s Order should respectfully be reconsidered.

³ Plaintiff’s motion to reconsider provides additional authority regarding why the Robert’s Rules of Order cannot be considered an administrative remedy as a matter of law.

of her talking about a matter of public concern during a town council meeting while Defendant Curtis had provided Plaintiff with the authority to speak.

Plaintiff thanks for the Court for the opportunity to supply this memorandum of law in support of its motion for reconsideration. If the Court desires any further briefing of this important decision, please feel free to let us know.

Respectfully submitted,

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ATTORNEY FOR PLAINTIFF

Columbia, South Carolina
July 30, 2019

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There were no witnesses.

There were no exhibits.

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Certificate of Reporter 27

1 (COURT REPORTERS NOTE: Equipment malfunction,
2 first few minutes of hearing could not be
3 recovered. Record starts from the point of
4 where files were recovered.)

5 THE COURT: Is 15 days, fair enough?

6 MR. SMITH: Your Honor, if you would, as long as
7 I can get the ability of them for the deposition--

8 THE COURT: I'm assuming that Ms. Spruill's
9 going to cooperate with, that's my assumption.

10 MS. SPRUILL: We'll do our best, Your Honor.

11 THE COURT: Okay. All right. And if y'all have
12 a hiccup or an issue let me know, all right. About
13 15 days is hard and fast unless the two of you come
14 back to me and say you need a couple of more days and
15 then I'm fine with it. I mean, y'all are the ones
16 who have the hard date for trial. Okay.

17 All right, Ms. Spruill, I'll be happy to hear
18 from you.

19 MS. SPRUILL: Your Honor, this case is unusual,
20 I will give you that. It stems entirely from one
21 meeting of the city council of the City of
22 Simpsonville. The Plaintiff at that time, Sylvia
23 Lockaby, was a member of the city council. The
24 Defendants there listed are the city, the Mayor of
25 Simpsonville, Janice Curtis and Adam Randolph who is

1 a -- was at the time, an officer for the Simpsonville
2 Police Department who was serving a sergeant-at-arms
3 for the meeting.

4 The only -- the critical event for purposes of
5 this motion and this hearing and as reflected in the
6 minutes of that meeting, which are attached to my
7 motion, was that after some back and forth, which is
8 set forth verbatim in the minutes and numerous calls
9 for order, the mayor ultimately decided that Sylvia
10 Lockaby should leave the meeting. The whole exchange
11 is there. The only break in the minutes is, as
12 testified by the Clerk of Court, Phyllis Long, her
13 deposition's attached, the clerk of court -- the
14 clerk to chamber counsel, is that she had paused when
15 the mayor said recess. So, anything that happened
16 after the mayor called the recess is not in the
17 minutes.

18 The claims here are under the Torte Claims Act
19 and the Federal Civil Rights Act, Section 1983,
20 relating to that ejection from the council meeting of
21 Plaintiff. We have got a properly main supported
22 motion, we've got affidavits, we got deposition
23 testimony. That what has happened here was simply a
24 decision by the chair of the meeting. That was not
25 appealed. Could have been. Wasn't. And is subject

1 to legislative immunity. The city council has to be
2 able to function and this is what we're asking the
3 Court to do.

4 So, our two grounds are first, that she didn't
5 make a challenge under Robert's Rules, which she
6 could have. So, she didn't exhaust her remedies.
7 That is a matter of discretion for the trial court,
8 not a jury question. And the second issue is
9 legislative immunity. And Plaintiff correctly stated
10 legislatures are not entitled to absolute immunity.
11 That's true. But they are entitled to absolute
12 immunity for exercise of legislative power. Which is
13 what we contend happened here. So thus, as a matter
14 of law, we believe that the Defendants are entitled
15 to summary judgment.

16 THE COURT: Yes, ma'am.

17 MS. SPRUILL: In their memorandum, which I
18 object to because it was submitted well after the
19 court's 24 hour deadline, which I made them aware of
20 in my notice of hearing; they contend that we haven't
21 shown any cases where this provision of Robert's
22 Rules has been used to throw a case for lack of
23 exhaustion. We think it's because nobody has thought
24 to bring a case for facts like this one. Like I say,
25 this is an unusual case. It doesn't mean that she

1 shouldn't have exercised her remedy when she had it
2 and not years later taking up this Court's time.

3 Local governments need to be able to hold
4 meetings and the chair needs to be able to rule
5 without fear of liability. That's what this is
6 about. This isn't a case where something happened,
7 other than, in the context of a meeting that was
8 proceeding according to the Simpsonville Code of
9 Ordinances and Robert's Rules of Order.

10 The rules and the immunity doctrine contemplate
11 that legislatures aren't always going to do things
12 right but it gives them protection for actions taken
13 in connection with those duties. That's why you got
14 this appeal right. That's why you got immunity. If
15 they always did things right, there would be no
16 reason to have the immunity doctrine at all. This
17 protection is there so that legislative bodies can
18 function.

19 And to the extent they're exceptions in the
20 event that an appeal would have been futile, there's
21 no showing that that's the case here. If she had
22 asked -- if the council believed that she was in
23 order, council could have said so and she would have
24 been allowed to stay but she didn't ask.

25 With respect to the Robert's Rule provision

1 cited, I have a copy for the court. It's Rule 24.
2 And that rule begin -- the first sentence is By
3 electing a presiding officer, the assembly delegates
4 to him the authority and duty to make necessary
5 rulings of questions of parliamentary law. But any
6 two members have the right to appeal from his
7 decision on such a question. And the way that works,
8 sort of like an objection in Your Honor's court. You
9 stand up and say, I appeal. And if you get a second
10 and there's a vote, then the body has overruled the
11 chair. It can be applied to any ruling but members
12 of the body have no right to criticize the ruling of
13 the chair unless they go through that appeal process.
14 And that appeal must be made at the time of the
15 ruling.

16 Further, the rules go on to say you need to do
17 this. On page -- and what I just handed you, it's on
18 Page 258. If a member disagrees with the ruling, he
19 should not hesitate to appeal. The situation is no
20 more delicate than disagreeing with another member in
21 debate.

22 It's encouraged, you're supposed to do this.
23 All you have to do when you see that, for an example,
24 is stand up and say, I appeal from the decision. So,
25 when you look in the minutes, which are attached as

1 Exhibit 1 to my memo, you see through this whole
2 exchange, there are repeated calls for order prior to
3 the event. Plaintiff could have appealed any of
4 those and didn't. And then, leading up to it, it
5 appears that she wanted the mayor to throw her out.

6 You see there the Mayor says, Order -- gavels
7 three times says, Order, order, order.

8 Plaintiff says, You going to throw me out?

9 The Mayor, Order.

10 Plaintiff says, You going to threaten to throw
11 me out?

12 Mayors says, Keep it up and you'll find out.

13 Plaintiff says, I guess I will.

14 Mayor says, Okay.

15 Plaintiff says, I'm Keeping it up.

16 I mean, through this exchange. So, what we've
17 got here is on the record, it's a rare case, Your
18 Honor, where you got the transcript, you got the
19 official minutes. Which are the only source of
20 information with respect to what was happening at
21 that meeting. It's clearly a legislative act.
22 There's clearly no appeal. It doesn't matter if the
23 mayor was right or wrong in her decision because
24 there was no appeal and there's legislative immunity
25 for the action in question.

1 So, those are the grounds for my motion. And
2 that is why I believe that the Court can rule as a
3 matter of law, notwithstanding the discovery the
4 Plaintiff says she still wants. Which we haven't
5 stonewalled, they just haven't asked for it.

6 THE COURT: Okay. All right, thank you very
7 much, I appreciate it.

8 MS. SPRUILL: Thank you.

9 THE COURT: Yes, sir.

10 MR. SMITH: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 MR. SMITH: They are correct in that it is an
13 extraordinary case. But before I go into that
14 detail, Your Honor, I have a copy of my memorandum
15 submitted yesterday, do you want me to a hand copy up
16 to you?

17 THE COURT: Yeah, that will be fine.

18 MS. SPRUILL: Your Honor, while he's doing that,
19 I have one of my own.

20 THE COURT: I've got all of it in -- as a matter
21 of fact, I've been looking at it as you've been
22 arguing in the record. But I do prefer hard copies.

23 All right, go ahead, yes, sir.

24 MR. SMITH: Thank you, Your Honor. This is
25 extraordinary, Your Honor, because, frankly, in our

1 democracy we don't have this happen very often.
2 Where you have a presiding officer using
3 sergeant-at-arms powers to eject a sitting member, an
4 elected member, while that person had the floor,
5 during a meeting.

6 And that is what this case concerns, First
7 Amendment violation, Your Honor. That is why we
8 brought this matter and that is -- there are several
9 issues of material fact that, we believe, would not
10 be appropriate to grant our motion for summary
11 judgment. But, Your Honor, I'd like to actually
12 start with their claim of immunity here. So,
13 assuming for a second we agree on the facts, which we
14 do not on material facts, they are also not entitled
15 to immunity.

16 This initial argument was raised at the motion
17 to dismiss stage, Your Honor, on immunity grounds.
18 So, this is their second bite at the apple here. And
19 now they're using what is obviously [indiscernible]
20 evidence so far to establish as the facts of this
21 case -- to have immunity. Again, we have issues with
22 issues of material fact. But aside from that, they
23 would not be entitled to immunity, primarily, Your
24 Honor, because this is not a legislative act.

25 They cite to Whitener vs. McWatters, that's a

1 Fourth Circuit case from 1997. It involved a
2 discipline by the entire board in that setting.
3 Meaning, there was outside conduct done by that
4 particular member that they thought were against the
5 rules of the court of governing that body. When a
6 member of that particular body found out about that
7 that members violation of those rules of the decorum,
8 they came back, there was evidence brought, there was
9 a hearing had. They actually, as a body, decided to
10 censure him. Then he brings a case, also on First
11 Amendment grounds. Fourth circuit is saying in that
12 context, there is a legislative act here. That
13 triggers the legislative immunity.

14 Here, the minutes right now are presumed to be
15 valid under state law. I do not see, and I don't
16 think Your Honor will find, even if we were to go
17 further down this evidence about what happened in
18 this meeting, that there was ever, ever an act by the
19 body of Simpsonville and city council in trying to
20 discipline a city member of that council while she
21 had the floor during debate about storm water
22 drainage and curb replacement at that business
23 meeting.

24 Meaning, Your Honor, with no legislative act
25 here but by Mayor Curtis being, what my client

1 referred to as vindictive in her deposition, which
2 was made by filing in this case, Your Honor, you will
3 be able to read how she thought -- because she can't
4 get in the mind of Mayor Curtis, one of the things
5 we're hoping to discover in deposition of that
6 defendant, Your Honor, while she would have done that
7 other than being vindictive toward her political
8 rival. Which is to have her ejected from that
9 meeting at that time. That was on her -- her
10 decision as the presiding officer. Not a decision of
11 the legislative act, as recognized by the U.S. Fourth
12 Circuit Court of Appeals or by the South Carolina
13 law, that could possibly confer legislative immunity.

14 That works under the common law of understanding
15 legislative immunity, Your Honor, but also, as to
16 whether or not legislative immunity could
17 hypothetically be attached under the South Carolina
18 Tort Claims Act. This could not have been a
19 legislative process. Perhaps a bylaw passed in that
20 meeting was certainly a legislative process. A
21 resolution passed in that meeting would be the same.
22 But a statement by the presiding officer to the
23 sergeant-of-arms to approach and say, Get her out.
24 That is not a legislative act. That is an act by the
25 presiding officer in the context of a meeting. Which

1 has never been afforded legislative immunity in these
2 laws.

3 Having said that, Your Honor, even if you were
4 to look at that -- if you were to look at this case
5 and decide that immunity hypothetically could apply
6 here, there are also issues of material fact which
7 might actually dictate immunity but would not
8 appropriate at this stage of the proceedings. But
9 perhaps later a motion in limine at trial. That
10 would be, Your Honor -- there are issues of fact
11 concerning two principle material things. That is
12 one, what actually was said by my client when Officer
13 Randolph approaches the bench? There is, in the
14 affidavit, supporting their motion for summary
15 judgment, declarations by the clerk, Ms. Phyllis Long
16 and the Defendant, Randolph, that my client
17 Ms. Lockaby says, in that moment, basically says I'm
18 leaving anyway. Or I plan to leave away.

19 That, Your Honor, is not in the minutes. There
20 is a question right now as to whether or not that was
21 ever said. If it was said, Your Honor, as we point
22 out in our memo, it would have appeared to any member
23 of that council, who was present at that time, at the
24 next business meeting of city council, they would
25 have included that in these minutes. Which control

1 Your Honor's deliberations concerning the activities
2 of everyone in this meeting at this time. It is not
3 there.

4 That, I believe, Your Honor, could
5 hypothetically go toward their argument that my
6 client voluntarily left this meeting, while we
7 maintain at this time, Your Honor, that this was a
8 Fourth Amendment seizure when Sergeant Randolph said,
9 May you please come with me? And she, in her
10 deposition says, I didn't feel free to disobey his
11 orders. That, Your Honor, I believe is an issue of
12 fact which must be determined here to provide that we
13 might be able to prevail, eventually, on liability.
14 Granting summary judgment on that issue, Your Honor,
15 would be inappropriate at this point.

16 The second issue, Your Honor, goes directly to
17 that voluntariness I was talking about before. And
18 primarily, also her ability to exercise
19 hypothetically that appeal right that they claim
20 somehow exists here. That being -- if you look at
21 the minutes, Your Honor, it goes, Need her out.
22 That's from the officers.

23 She says, I need her out.

24 At this point, the next statement is Council
25 Member Lockaby, will you, please, come with me? Or

1 can you come with me, please? I don't see how in
2 these minutes, there was ever a point in which an
3 appeal could have been lodged. Their timing is
4 already there. This is not a motion to council on do
5 behalf of the presiding officer, point to order, I
6 would like to address the conduct by Council Member
7 Lockaby and censured that conduct by sanction her
8 removal. Would council be in favor? None of that
9 happened here. Instead, Officer will you approach?
10 And then that colloquy occurs.

11 Wherein here, hypothetically, could she have
12 exercised this right of appeal? It's not possible.
13 Based upon the approved minutes that Your Honor sees
14 here. Also, Your Honor, that assumes that this right
15 of appeal is actually in existence under our laws.
16 It might exist in the writing of the Robert's Rules
17 of Order, but we have never seen any court, anywhere,
18 impose these as being an exclusive remedy, you must
19 seek, as a sitting legislator during a public
20 business meeting on behalf of your constituents.
21 That is to say, if you do not use the Robert's Rules
22 of Order, that means that there will not be the
23 opportunity for you to prevail later unless the
24 Constitutional rights were violated during a meeting.

25 Your Honor, the Robert's Rules might provide

1 that there could be an appeal. However, they also
2 say in Section 24 of the Robert's Rules of Order,
3 which we cite in our memo, that if can be applied to
4 any ruling by the presiding officer except, when the
5 chair rules on a question about which there cannot be
6 two reasonable opinions, an appeal is dilatory and is
7 not allowed. Here, as I've already pointed out, Your
8 Honor, there cannot be two reasonable opinions about
9 whether or not Ms. Curtis, correctly censured my
10 client in asking questions of the city administrator
11 about curbage and storm water drainage.

12 I can't honestly see how there's two reasonable
13 opinions about whether or not that is an appropriate
14 censorship in this context. Because again, the
15 timing, you can see it in the minutes, it's happening
16 instantaneously, the disagreement. And then the
17 ordering of the officer coming up. But also, we
18 don't allow that under the First Amendment to the
19 Constitution. Even if you're a public official. If
20 you're speaking about a matter of public concern, you
21 cannot be silenced as to the conduct of your speech.

22 And that, Your Honor, is the presumption working
23 in our favor in this case. Section 24, also in Rule
24 3, provides that, An appeal is in order when another
25 has the floor. But the appeal must be made at the

1 time of the ruling. If any debate or business has
2 intervened, it's too late to appeal.

3 Well, what intervened was Defendant Randolph
4 standing right in front of her saying, Can you come
5 with me? There is no other business presiding
6 officer asked to happen at that moment other than her
7 ejection.

8 Your Honor, Rule 61 of the Robert's Rules of
9 Order provides, and I think this is clear here, that
10 we probably got a [indiscernible] must be applied.
11 Although, the chair has no authority to oppose a
12 penalty or to order the offending member removed from
13 the hall. The assembly has that power. It should be
14 noted in this connection that if any case of an
15 offense against the assembly occurred in the meeting,
16 there is no need for a formal trial. Provided that
17 any penalty is imposed promptly after the breach.
18 Since then witnesses are all present and make up the
19 body that is to determine the penalty.

20 They cannot prevail on the idea that the
21 Robert's Rules of Order created an administrative
22 appeal that she needed to exhaust such that this case
23 can now not be brought. There's a reason our courts
24 recognize this, the rules are inconsistent to say the
25 least.

1 That is why, as a matter of law, Your Honor, we
2 think this can't be attached. But as to the two
3 issues of material fact, Your Honor, we also agree
4 that the Defendants motion for summary judgment
5 should be denied.

6 THE COURT: Okay. And in your stated causes of
7 action, are you asking for a money judgment?

8 MR. SMITH: Correct, Your Honor.

9 THE COURT: How do you value that monetary
10 amount?

11 MR. SMITH: Under a -- 83 action the First
12 Amendment is the answer, Your Honor. You're able to
13 claim compensatory damages and punitive damages.

14 THE COURT: Okay. But you to prove them, right?

15 MR. SMITH: That's correct.

16 THE COURT: What's the value of your damages?

17 MR. SMITH: The value of our compensatory
18 damages are going to be pain and suffering, Your
19 Honor. Which we're going to establish at the trial
20 of this case. And right now are basically -- and
21 that is in our deposition, Your Honor, which you can
22 read. She testified that she had pain and suffering
23 with people coming up to her after this and saying,
24 You were the person who got ejected and making fun of
25 her for that. Then there's also the punitive's here.

1 And this is a censorship case. And that is something
2 that our First Amendment analysis have provided many
3 times. Varying degrees of awards. From tens of
4 thousands of dollars to hundreds of thousands of
5 dollars. So, Your Honor, that's how we value this
6 matter.

7 THE COURT: Okay. And under your gross
8 negligence cause of action, you allege that the
9 Plaintiffs had a duty to her. What was that duty?

10 MR. SMITH: The plaintiff alleged that the
11 Defendants had a duty to--

12 THE COURT: Yeah, I'm sorry.

13 MR. SMITH: That's okay. To properly train
14 Mr. Randolph, primarily, so he would know that this
15 is not something that I, as an officer, if I'm
16 upholding the State Constitution and the U.S.
17 Constitution, should do when asked. That's
18 primarily -- also the gross negligence in the
19 enforcement of the rules concerning this matter at
20 the time. Being they were trying to say, what I
21 would I assume, a most generous interpretation of the
22 law could be, that the Robert's Rules and the
23 ordinances create some kind of reasonable time, place
24 and nare restriction on conduct there, which is not
25 the case. In which they knew at the time yet,

1 probably, were positing it to their lawful ability,
2 at the time, to eject my client during a public
3 meeting.

4 THE COURT: Okay. all right.

5 Okay, Ms. Spruill, I'll allow you to respond.

6 MS. SPRUILL: Very briefly and I apologize if
7 it's a scattered shot. There were several things I
8 wanted to mention. First, I would object to the
9 premises that Mr. Smith has raised. It sounded like
10 he was arguing in a city council meeting, a city
11 council member can talk about anything of public
12 interest. Maybe that's not true. Decorum won't let
13 you talk about anything that isn't on the agenda.
14 They're pretty strick rules about what you can talk
15 about in the city council meeting.

16 And I would point the Court's attention in the
17 City Code Ordinances that we attached to Section 63,
18 which sets up the rules and says, We, subject to
19 state law and provisions of this code, we adopt
20 Robert's Rules of Order, the current version.

21 I would also point the Court to Section 267 of
22 the code, which says, essentially, the Rules of
23 Decorum, Anyone person that must speak, must do so
24 with decorum.

25 The Mayor's decision here is consistent with

1 Section 267. And again, it doesn't matter if she got
2 it right. That's why immunity is here and that's why
3 Robert's Rules provides for the appeal. You can't
4 expect perfection in running a meeting at all times.
5 And that's why you got this immunity so people will
6 be willing to run for elected office. It's
7 ridiculous to suggest that you have to perfectly
8 comply with the rules. If she got it wrong. If --
9 she should have gone through the procedure Mr. Smith
10 references in Rule 61. Well, the proper procedure
11 there, again, is an appeal or to raise a point of
12 order under Rules 23 or 24.

13 And Mr. Smith's contention that you couldn't
14 stand up and appeal, it's exactly like the analogy
15 that I gave earlier when we have to stand up and make
16 an objection through testimony during a trial.
17 There's not a break in the conversation, you just
18 have to do it. And that's how the rules are set up.
19 That you stand up and make your objection right then.
20 You don't have to have the floor, you just stand up
21 and make the objection and that takes precedent over
22 anything else the body is doing.

23 He also suggested that there weren't two basis
24 for opinion. Well, it's clear to me that the mayor
25 believed that Section 267 wasn't being complied with

1 and that Council Member Lockaby was out of order.
2 And Council Lockaby believed that she was in order
3 and was discussing a matter on each of these.

4 So, the very underlining basis of Plaintiff's
5 case shows that she believes that there were two
6 reasonable positions to be taken at that time. There
7 was no decision on the body because -- by the body
8 because the mayor believed that she was -- believed
9 she was out of order. The mayor ruled as Section 24
10 allows as the presiding officer. The full body would
11 have ruled if Council Member Lockaby had appealed.
12 It's ridiculous to suggest this isn't legislative
13 action because the entire body didn't rule.

14 The case that has been cited to you by both
15 sides for the general principle of legislative
16 immunity for legislative activity, the Richardson vs.
17 McGill, the South Carolina case. That case involves
18 one legislature saying defamatory things in the
19 course of his job and they find there was immunity.

20 Whitener, again, Plaintiff's argument appears to
21 be that because the behavior was much more egregious
22 in that case, that immunity should apply but it
23 shouldn't apply here. The facts are very much more
24 exaggerated, the conduct is worse, the activity
25 between the members of the body is worse. And the

1 Fourth Circuit said it was appropriate to dismiss
2 that under Rule 12(b).

3 You know, from what we see here this was the
4 city council trying to have a city council meeting as
5 best it could. And all of those rules that protect
6 legislative bodies in the course of performing their
7 legislative functions apply here. There's no
8 question of fact remaining. There's no
9 underlining -- I guess, I can think of some scenario
10 where -- and the other thing he mentioned, so the
11 comment that Council Member Lockaby may or may not
12 have made as she was leaving, that's a red herring.
13 That's after the decision from the chair was made.
14 And it's clear from the deposition of the city clerk
15 that she hit pause when the mayor said, recess. So,
16 there's no reason that would have been in the
17 minutes, it was during a recess. It doesn't matter
18 whether she said anything.

19 And the other matter, with respect to Officer
20 Randolph and Your Honor's question about negligence,
21 Mayor -- not mayor, Council Member Lockaby's
22 testimony was that he was solely acting at the
23 direction of the presiding officer. She doesn't
24 attribute any other activity or any other animist to
25 him in her deposition. Which I went to the side in

1 my memo of quoting more rather than less so Your
2 Honor would have everything that was there.

3 But with respect to Officer Randolph, she says.
4 No, he was just doing what the presiding officer told
5 him. And with respect to the mayor, she does say
6 that she suspected the mayor was being vindictive but
7 she was sitting there acting as the presiding officer
8 for the people. It's our position that the
9 exhaustion issue is in the court's discretion. And
10 the immunity issue is a question of law for the court
11 based on the minutes we have here and the decision at
12 issue.

13 THE COURT: Okay. All right, thank you.

14 Mr. Smith, what additional discovery do you need
15 to do between now and either the trial or decision on
16 this specific issue?

17 MR. SMITH: Your Honor, we have the outstanding
18 motion to compel. Assuming they're able to actually
19 give us a meaningful -- we understand their position
20 regarding some of these key factors including what
21 the actual reasoning was for the ejection? Which is
22 still unclear to us, frankly. That would be a great
23 opportunity for us then to have that understanding,
24 we need to do a deposition to then occur within two
25 weeks. So, I think we can go ahead and notice the

1 deposition, Your Honor, but it would be wonderful if
2 we can get the motion up here very quickly or if
3 they're willing to give us the full response that we
4 asked for, then we can probably do it within a matter
5 of days, frankly.

6 THE COURT: What's outstanding?

7 MS. SPRUILL: Your Honor, I do have a question.
8 He hasn't told me what he wants. You've got all the
9 correspondence there. I think I clearly responded.
10 I think what he wants are my legal theories, which he
11 does not get in discovery.

12 THE COURT: What's outstanding?

13 MR. SMITH: Your Honor, on a motion to compel, I
14 did not come today ready to argue that but I will say
15 that we have a file, you can see in our colloquy, in
16 terms of emails about what we're lacking right now
17 and what we would need. So, I think that Your Honor
18 can look at that and help to determine that.
19 Hopefully, we can work that out honestly between us.
20 We filed a motion to compel because we didn't know
21 and we thought we'd get the Court's assistance in
22 doing that.

23 But also, Your Honor, that was an effort to show
24 Your Honor how necessary it was for us to have this
25 discovery and actually why this hearing was

1 inappropriate.

2 THE COURT: I understand, okay. All right. So,
3 I'm going to take it under advisement for 15 days.
4 And I'm going to go back and I'm going to read
5 transcripts of the actual meeting itself and I'll
6 review your memorandum of law as well. You each have
7 the opportunity up and through that time to
8 supplement the record, okay.

9 MR. SMITH: Thank you, Your Honor.

10 THE COURT: All right, good enough. Thank
11 y'all, y'all have a great day.

12 MS. SPRUILL: Thank you, Your Honor. I have the
13 original depositions if you'd like them. The
14 Plaintiff put them on file yesterday.

15 THE COURT: Okay. All right. Well, if they're
16 in file then I'll see them.

17 MS. SPRUILL: Thank you, sir.

18 THE COURT: All right, thank you.

19 (WHEREUPON, the proceedings were concluded.)
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 25th day of April, 2019.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 25, 2020



APRIL P. HERRON, Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Sylvia Lockaby,

Plaintiff,

v.

City of Simpsonville, Janice Curtis, and
Adam Randolph,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No. 2018-CP-23-00731

**CHRONOLOGY OF EVENTS PERTINENT TO PLAINTIFF'S MOTIONS TO
COMPEL/ FOR CONTINUANCE**

<u>DATE</u>	<u>EVENT</u>
2/9/18	Case filed.
6/20/18	Form 4 Order denying motion to dismiss.
6/26/18	Defendants serve discovery requests.
8/22/18	Defendants file motion to compel after no discovery responses received and only after sending a follow up letter and email seeking responses.
9/26/18	Plaintiff serves discovery responses in order to remove motion to compel hearing set for 10/2/18 from calendar
1/9/19	Mediation conducted.
2/7/19	Plaintiff's deposition.
2/11/19	Parties submit status conference form choosing 6/17/19 trial date.
2/15/19	Plaintiff serves discovery requests. ¹
2/18/19	Defendants move for summary judgment. Hearing originally set for 3/6/19, continued due to vacation of Defendants' counsel. Rescheduled for next term.

¹ Plaintiff has not noticed any depositions in this matter, nor has she contacted the Defendants about scheduling depositions.

3/12/19	Defendants send notice of 4/25/19 hearing on motion for summary judgment, including information about the Court's memo requirements.
3/18/19	Defendants timely respond to Plaintiff's discovery requests.
4/18/19	Plaintiff sends letter demanding supplemental responses by 4/23/19 at noon.
4/23/19	<ul style="list-style-type: none"> • 11:47 Defendants send supplemental responses. • 1:41 Plaintiff sends follow up message and asks about continuance. • 1:47 Defendants agree they will consent if the hearing can be rescheduled before trial preparation would need to begin. • 3:08 Clerk indicates hearing would not be rescheduled until week of 6/17. • 3:20 Counsel for the parties have a phone call about any additional information sought. Counsel for Defendants is under the impression that the issue is resolved (or at least resolved enough to proceed with the hearing). • 4:24 Defendants file an additional affidavit in support of their motion pursuant to Rule 6, SCRCP.
4/24/19	<ul style="list-style-type: none"> • 8:57 Pursuant to the Court's policies, Defendants file a memorandum in support of their motion at least 24 hours before the hearing. • 12:16 Plaintiff files motion to compel and motion for continuance.
4/25/19	<ul style="list-style-type: none"> • 9:30 Hearing scheduled on motion for summary judgment.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Robin B. Stilwell, Circuit Judge

RECEIVED
Sep 24 2020
SC Court of Appeals

Appellate Case No. 2019-001449

Sylvia Lockaby,.....Appellant,

v.

City of Simpsonville, Janice Curtis, and Adam Randolph,.....Respondents.

CERTIFICATION OF COUNSEL REGARDING MATTER
INCLUDED IN THE RECORD ON APPEAL

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

/s/ Taylor Smith

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September 24, 2020