

AUDIT COMMITTEE MEETING

July 15, 2019

A special meeting of the Audit Committee was held this date beginning at 3:06 p.m. at Charleston City Hall, 80 Broad Street.

Notice of this meeting was sent to all local news media.

PRESENT: Chairman, Councilmember Michael Seekings, Mayor John J. Tecklenburg, Councilmember Gary White, Councilmember Kevin Shealy, Councilmember James Lewis, Jr., Councilmember Robert Mitchell, Councilmember Marvin Wagner, Councilmember William Dudley Gregorie, Councilmember Perry K. Waring, Councilmember Harry J. Griffin, Councilmember William Moody, Jr., and Councilwoman Carol Jackson.

Chairman Seekings opened the meeting with a moment of silence.

Chairman Seekings said, "Before we begin, and this is certainly not for the edification of my fellow Councilmembers, but for those in the audience, the Audit Committee is a standing committee. It is a committee of the whole. That means every member of the City Council is a member. I think that Councilmembers Lewis and Mitchell are on their way. Councilmember Shahid is away on preplanned duties in Columbia and is not here.

So, the purpose of today's meeting, just so everybody knows, is to receive via oral and written report the findings of the work of our Internal Auditor, Mr. Majernik, who you all will hear from. By unanimous vote of this Council, we asked him independently to do a Mayor's Division Audit, which he's going to report to us today. I believe as the Chairman I have some wide latitude, but because we are a committee of the whole, I just want to suggest to my fellow Councilmembers the following procedure and see if it suits you. If not, let's have a little debate about it. I'd like to do that before we begin with Mr. Majernik's report. The idea today is not one of us has seen what's about to be shown to anyone in this room, either heard about it, we haven't read it, and we haven't seen any presentation. This will be the first time that we've seen this. I actually went back today and looked at our rules, which is always a good idea, and one of the duties of the Standing Committees of the City of Charleston is to examine and report on all petitions and other matters that are brought before this body using due diligence thereon. In an effort for all of us to have due diligence and to give everybody a chance to dissect and to digest what we're going to get today, my suggestion is as follows. We take the report from Mr. Majernik, who I understand is going to take somewhere between 30 and 45 minutes. I believe we have Mr. Burchstead here, who is from outside counsel who's going to perhaps give us a brief report following Mr. Majernik's report. He has seen this report. I would then suggest that if there is any procedural questioning, that Council asks procedural questions, but in terms of substance, what I would suggest is that we don't adjourn this meeting *sine die*. What we do is we adjourn it until next Thursday at 3:00 p.m., which is a time I think we all discussed about coming back. At that time, Council can address substantive questions, make any motions they have, or have any questions there. I know there are some of us in this room that have long had a standing appointment in West Ashley at 5:00 p.m. I suggest you might be a little late for that, but I don't want you to miss it completely. So, that's the procedure as the Chairman of this Committee that I suggest to Council. I just want to hear any comments or questions before we begin and ask Mr. Majernik to come on up here. Is there any objection to that?"

Chairman Seekings recognized Councilmember Moody.

Councilmember Moody said, "The 25th at 3:00 p.m.?"

Chairman Seekings said, "That's the day. Yes, sir. Are there any other questions before we begin? For those of you that are here from the public, this is a Committee of the City. We've issued an agenda.

We do not take public comment at these meetings. However, we do have a City Council meeting tomorrow. I believe, by the way, Mr. Mayor, our City Council meeting is not here tomorrow. Am I correct about that?"

Mayor Tecklenburg said, "Crosstowne Church."

Chairman Seekings said, "It's at Crosstowne Church on Bees Ferry Road at 5:00 p.m. There will be a chance to comment on anything you hear tonight or anything that concerns you as a matter of the City. So, I'd certainly invite you to do that. If there are no questions about procedure --."

Chairman Seekings recognized Councilmember Griffin.

Councilmember Griffin said, "I have just a comment about the procedure and how we want to go about it moving forward, nothing within the report since I haven't seen it, but I want to make sure that our Auditor is protected in every way, shape or form. So, I would suggest that we entertain some discussion whether or not the Auditor should report strictly to the Audit Committee instead of the Mayor."

Chairman Seekings said, "So, if I might interject, I'm sorry I didn't talk to you personally about this, but I did speak to a couple of fellow Councilmembers. My suggestion is this. Because we're about to receive a report, and we're in the process of getting that report, and I think what we're going to hear from Mr. Majernik is it's not complete yet, that we take up that issue as this report is completed in our next meeting to see going forward how the structure or reporting from our Internal Auditor goes. We are in the structure now. The audit has begun. I don't think we should be changing the rules in the meantime. So, I certainly will put that on our agenda next time if that suits you."

Councilmember Griffin said, "Thank you."

Chairman Seekings said, "Okay. Are there any other questions procedurally before we begin? Alright, so our procedure is we're going to receive this report. Mr. Majernik, thank you very much."

Robert Majernik, Internal Auditor, said, "Good afternoon, and thank you, Councilmember Seekings, fellow Councilmembers. I'd like to thank you for this opportunity. I do want to say first I'm following Councilmember Seekings that nobody has seen this report outside of the attorneys and I. So, in that same regard, the Mayor has not seen this report, has not had a chance to respond to anything in this report, so we would ask that you guys please allow him that opportunity before making any conclusions regarding what's in here. That would only be fair to everybody involved. So, with that, I also want to say we did receive several e-mails from Councilmember Griffin in the last week, and we have looked through some of those, but have not had an opportunity to look through everything. So, we have included a little bit of that herein, but we'll continue that review beyond this report. So, this would be an initial report to go through what we have found so far.

So, first of all we'd like to just give you a brief summary of what has happened in the Mayor's Office in operating expenditures over the last several years. We have in 2015, and this is during Mayor Riley's tenure, and I do want to make that very clear that that is 2015. It was still during Mayor Riley that the Mayor's Office budgeted \$13,500. It was later raised to \$22,900 and ended up spending \$35,200, and you can see the years going forward where we budgeted \$116,500 and spent \$119,000 in 2016, budgeted \$70,000 in 2017 and spent \$56,217. In 2018, there is a large fluctuation, but I will point out that there is a reason for that. We budgeted \$244,100 and ended up at \$245,891. That is due to the change of lobbying expenses, which it shows down here at the bottom. That was budgeted in our Legal Department, and that has since been moved over to the Mayor's division. So, that is the reason for that large fluctuation. So, that accounts for \$162,355 of the \$245,000 spent for 2018.

Moving on, the first finding that we have, we have identified some question costs, and what we're looking for here is a public purpose identified in some of these expenses that we're going to show herein,

and we could not identify, and we did not see anything documented regarding a public purpose for the events herein. The first expense that we have is \$87.89. This is for business cards for Dr. Ofunniyin. He is with Gullah Society. We also had a rush fee on this job for \$20.00. So, he is not an employee of the City. He has our City seal, 'an equal opportunity employer' on his cards, so we did not consider this to have a public purpose behind that expense. Next up, we have The Chronicle Communications. There is a \$750.00 charge from November 2016. This is for an advertisement that was placed in the Charleston Chronicle. The ad that was placed is herein. This is for congratulating Mr. James French for his 90th birthday, as well as 45 years of service with the Charleston Chronicle. We did not see a public purpose behind this. Next up, we have more business cards. This one we've already looked at in the start of this audit. So, this is for the Mayor and Mrs. Tecklenburg, business cards that were printed off for her, 500 business cards, the total cost \$158.52 in March 2017. Next up we have another business card. This is for Jonathan Green. He is also not an employee of the City. He has his title listed as Ambassador of the Arts. It includes a City seal, 'an equal opportunity employer,' but we're not sure why we ended up purchasing business cards for him, as well, as he's not an employee. We have also purchased business cards in July of 2017 at a cost of \$73.03 for Lydia Cotton. She is Ambassador to Charleston Latino. Her address is listed as 80 Board Street, has her personal e-mail, and also has a City seal on there, as well. Next up we have more printing of business cards for the Mayor and Mrs. Tecklenburg and Dr. Ofunniyin. These are just reprints of what we've already seen in the past. There weren't any changes on these. Next up, we have a \$1,000 catering expense for what appears to be a birthday party for Mr. Lonnie Hamilton. So, this was charged in February of 2018. The total charge for this birthday party was \$6,600. Of the \$6,600, the City contributed \$1,000 and also contributed the use of the City Gallery which would have otherwise been \$1,000 at no cost to this event. Lastly, I'd like to point out that all of the RSVP's on this went to Robin Griffith, who is in the Mayor's Office Division, and this was going to her City e-mail, so it appears that all of the RSVP's were handled by the City.

Upon questioning, the CFO had given some question to this and also asked for legal's opinion, and the invitation for this was later changed to what reads next, 'Mayor John Tecklenburg and the City of Charleston look forward to seeing you at the 90th birthday celebration for Lonnie Hamilton III honoring a lifetime of public service.' So, none of the other details changed here. It's still at the City Gallery, no cost. Robin Griffith is still handling the RSVP's. So, we did not see a public purpose behind this expense. Next up, we have more business cards for Mrs. Tecklenburg and the Mayor. On the invoice, it does note that Mrs. Tecklenburg's name is on the front, and the Mayor's is on the back of this card. The cost for this print in June 2018 was \$162.63. Now, I'd like to point out that on these, we started showing that we are 'an equal opportunity employer,' along with the seal, which gives the presence that may or may not be held out to what the details are. Next up, we have an invoice from the Charleston Area CVB. This was for \$10,667.97. Within this, we paid \$3,996.33 for a reception, and this related to the individuals who located Heidi Todd, so this was a heroes reception for the people that found her. Of the \$10,000, the remaining \$6,671 covered travel expense, hotel expense, for the heroes that found her, up, I believe it was in North Carolina or Virginia, to get them down here and hold a celebration in their honor. Next up, we have some business cards in April of this year. On the order, it shows that Mrs. Tecklenburg ordered these. Again, it's the same reprint as the last order. Of all the business cards, we did receive two reimbursements, one from William L. Runyon, along with a letter for \$22.00, as well as one from the Mayor for \$41.00 as a reimbursement for some of the costs of the business cards. So, that has been given to finance to help cover the costs of those.

So, all of those, we had reason to believe there was not a public purpose within those expenses. Next up, we have one more expense that was an oversight on the part of Finance where the Mayor traveled from the 18th through the 23rd of May 2016, and there was an additional \$44.00 in a per diem. Down here, there's a note that shows, on the 22nd there was no City related business, so that was an oversight of the Finance department when they were calculating the per diem that went back to him.

We'll move to finding #2, and there is a lot of information here. You guys will have a written report that shows all of this. So, I will say that I know this is a lot to digest all at once. Finding #2, we're looking at travel expenses, and this chart that we have coming up shows a list of all of the travel that was paid for by the City that has been reimbursed, along with the dates that it was outstanding for the City. So, we have the first charges December 2015, January 2016. Both of those related to the same trip. Both of those were reimbursed on the 25th of 2016. They were outstanding 41 and 17 days at the City. Going down the list, like I said, all of these have been reimbursed, so there's no real question here other than the length of time some of them took for the reimbursement, particularly one in Mobile, Alabama. That was a charge that was reimbursed by the Navy. They also gave some additional monies, which were applied to the ticket for a total of \$915.00. They applied \$192, but the remaining \$712 was taken as a payroll deduction from the Mayor's paycheck. Otherwise, the only other thing to note on this would be there are two tickets for Lonnie Hamilton and Marie Arnod, one ticket apiece for a trip to Flers, France at a cost of \$2,047.81 apiece. We have received \$3,823, but we are still short approximately \$270.00 for that reimbursement.

Next up, we do have a couple of travel expenses. The first one, there's a charge from March 2016. I'm sorry, this is January 2016. That has the wrong date on it. So, this one is an additional charge for that first trip that had two charges. So, this one was overlooked when it was charged to the Mayor's division, rather than going to our due-from account. He has paid that this morning, so this one has been settled. Next up, we have a charge from March of 2016, \$234.40. This one also has been reimbursed as of today. So, this one was satisfied. We asked just to verify that nothing had been missed on this, and he had provided checks for both of these. This next one documents the two tickets for the Flers, France trip for Lonnie Hamilton, as well as Marie Arnaud, just showing we still have a little bit of that that has not been reimbursed. So, the recommendations we have for this is that going forward, if there is any travel that will not be paid by the City or for non-City employees, that that be paid directly by the organization who is agreeing to pay it, rather than us setting up a due-to/due-from, just so that we don't have to keep up with who owes what. I mean, that's just extra bookkeeping work for our staff if it's not our expense or our personnel traveling.

Next up, Finding #3, we have some Community Assistance grants that were given out. So, the first one we are going to talk about is for Fresh Start for fiscal year 2017, which was awarded in, that should say 2017 at the top, not 2018. So, this was awarded in the fall of 2016. The original, we have a staff committee that gets together and recommends whatever funding for everybody that applies. They have provided their recommendations in the second to the right column, here, and you can see that the staff recommended \$10,000 for the Fresh Start prison program. The Mayor has changed that to \$20,000, and that was later changed back to \$17,500 by Council to balance out the budget. So, with that program, Mrs. Tecklenburg is on the Board of that organization. So, there could be some implications with that, given she's on the Board of that particular organization. The Mayor increased the amount. We also have an e-mail forwarded to the Mayor indicating the money would arrive in a couple of weeks, and this was back when the money was heading there and that this would help us with our cash flow from the organization. So, we did note that. In the following year, Fresh Start 2018, and again we noticed this after the slides were sent, Fresh Start 2018 originally had a budget by the staff committee of \$15,000. It appears the Mayor increased this to \$17,500, although we do not have the document that shows it like we had it on this one, and it was later dropped to \$15,300 in the same regard to balance the budget. Then, we have one more where the Mayor is listed as an honorary Chair of the Board, and Mrs. Tecklenburg is listed on the Advisory Council for Charleston Sister Cities. So, in fiscal year 2018, the staff recommended \$0 funding. The Mayor increased this to \$10,000, and Council later dropped it to \$8,760 in the same regard to help balance the budget. So, for this, what we would recommend is going forward, anything with the Mayor or his family where they're on the Board of the Advisory Council that would create some possible independence issues, we would recommend that you recuse yourself from making any changes to those particular organizations.

The next find that we'll talk about is related to vehicle usage. So, before we get started into some of the policy details, I do want to make it very clear that we did look into our insurance policy, as that was

a concern of the Council, and it does show that anyone else is an insured while using your permission on a covered auto. So, the Mayor did provide his permission for Sandy to use the vehicle, so it is covered on our insurance as-is. Now, on the flipside, our internal take-home vehicle policy does note that City vehicles can only be operated by authorized personnel, which Mrs. Tecklenburg is not an employee here at the City. We have gone through, or on a separate note, there is also a form that was not filled out for a take-home vehicle, and within that form, that authorizes a \$30 per pay period payroll deduction for the use of the vehicle to and from work. All employees that have the take-home vehicle have that charge on there, and it is based on their income. The Mayor was not aware of this form. He had never seen it, but said he would be happy to sign it if given to him, but so far, up through payroll today, there is \$2,700 that should have been taken out of his paycheck that was not. There was also no tax on the use of that vehicle on his W-2. So, we would recommend with this that the City either change the policy to allow non-employees to use the vehicle or perhaps have special rules for the Mayor, or the Mayor should be provided another driver, so he has the opportunity to work to and from his engagements as his calendar is extremely busy. We also would recommend that the Mayor complete a take-home vehicle form and set-up arrangements for the \$2,700 in payroll deductions.

Next up, we have some procurement policy findings. We have three different contracts that were awarded. We have the first one with Lewis Walton, LLC for \$9,000, and they were engaged to implement a cloud based platform to simplify the process of managing board and commission appointments. So, that was an agreement that happened early 2016, and there were no bids that were put in for that, and anything over \$5,000 should at least have three written bids based on our internal policy. Next up, we have a \$38,000 contract with Chernoff Newman for an innovation plan and execution. Anything in our internal policy over \$20,000 should have been put out to bid for that work. Lastly, we have a \$25,000 contract with the Gullah Society for a reinterment project at the Gaillard Center, and they also provided educational programs and some community engagement in relation to that contract. Now, we will say that all of these were in compliance with the procurement ordinance that was put in by this Council in February of 2013, but was out of compliance with our internal procurement policies. We are recommending that the two of those be reviewed to where they are both in alignment with each other, to make sure that all policies going forward are in compliance with the ordinance or the policies as they are written.

Next up, we have Finding #6 related to a City computer. So, early in Mayor Tecklenburg's tenure, he asked our IT Director if he could come up with some way for Mrs. Tecklenburg to access his calendar. So, the IT Director recommended that he either provide a laptop and network with log-in and e-mail, that he provide a City id and password to access via our online platform, or that the Mayor's assistant print out a calendar for Mrs. Tecklenburg each day. So, what happened in April 2016, Mrs. Tecklenburg was issued a computer for approximately a month, so she could access the Mayor's calendar, and that came with an additional charge to the City of \$38.00 for an air card, however, there was no charge for the computer as it was one we already had on hand. So, the only additional expense the City incurred was a \$38.00 air card. That computer was later returned about a month later because there was trouble connecting. That's what we were told.

Next up, we have another potential procurement issue with the CitiBot contract. So, we're going to go through a timeline of what happened on this particular contract. In May through December of 2016, we have seen several e-mails between a City attorney, Mr. Willey, where he has met with CitiBot staff, reviewed materials, researched legal issues, reviewed a draft proposal, and charged the City \$1,670 for these services. That was all in 2016. Later in August 2017, the City issued their first RFP for ChatBot software. In October 2017, the proposal was selected. The City committee unanimously selected PayIt with a score of 419, CitiBot 333, and Software Verde 175. In approximately June 2018, the Mayor's office had directed Procurement to cancel this RFP based on budget concerns as PayIt's contract was \$277,000 over three years, and CitiBot, the next winner, would have been \$54,000. Approximately four and a half months later in October 2018, the City issued a second RFP that was essentially the same for this software. The only difference was there was a limit to \$50,000 per year, and there was one small change to the scope

where they were removing the requirement for a JavaScript, particularly in NodeJS. So, in February 2019, there was a new committee selected, and they selected CitiBot as the winner of this contract with a score of 517. The next winner would have been Agent 511 at 429, DiRad Technologies at 378, and City Insight at 366. So, for this, we are recommending that staff use caution when meeting with or accepting documents from potential vendors prior to issuing a RFP, and if there are reasons for canceling a RFP, that should be documented clearly on the justification for canceling the RFP.

We have several other findings that relate to policy violations here at the City, and we will say that most of these, while they are under the Mayor's Office, it's likely the Mayor did not have any specific involvement with any of these issues, but we did have an audit of the entire division. So, these are included herein. So, there were five of 276 P-Card charges we looked at that did not have a control form which was required by our P-Card policy. The next finding, we have 220 of 276 charges that did not have an approved signature on the P-Card charges. Next up, seven of the same 276 were missing receipts for P-Card transactions. Next finding, we have eight, and I'm kind of reading through these pretty quick, but all the details are listed in this report as are not specifically related to the Mayor, I'm kind of breezing over these. So, next up, we have eight of 286 invoices that were not approved by the Mayor's office. Of the eight instances, two of them would be excused as it's the Mayor approving his own travel, which should be allowed, but we would recommend that you usually have someone else oversee anything you're doing. Of the eight instances, there were another three where a staff member signed for the Mayor or one of his advisors rather than one of them signing. In one instance, a staff member signed off on their own expense reimbursement. Next up, we have two of 286 that were missing the CFO or Deputy CFO's signature, and we will note that one of those was in relation to the birthday party that we discussed in Finding #1. We have 21 of 286 expenses for meals that did not have at least one of the following, a detailed receipt, list of attendees, or a brief summary of business discussed. The latter of the two requirements would typically be required by the IRS if you were subject to an audit by them. We do have some notes in the files where finance has educated the Mayor's office staff regarding the need for detailed receipts versus having just a credit card receipt. However, there were still some charges after that that failed to have the detailed receipt. We have 51 of 286 invoices that were not paid within 30 days, and that's our standard here at the City is to have all invoices paid within 30 days. Of the 51, 45 of those were not submitted by the division within a timely basis for them to be able to make that payment. Five were held at finance for a longer amount of time than usual, and we couldn't pinpoint one or the other department. Both of them had it for a rather long time. There was no particular person responsible for that.

Next up, we have 19 of 27 travel reimbursements where our travel authorization form was not completed at least two weeks prior to the travel as required in our City policy. We do have one employee who is no longer here who had been notified of that specifically, and there were some notes in the file for Mr. Martin, and there were another ten instances after that note was in there where he had still failed to comply with that requirement. Next up, we have eight of 27 travel reimbursements where the travel expense recap once you come back from that travel was not completed within 15 days. Our policy states that it should be completed within five, but no later than 15 days at the conclusion of your travel. Lastly, we have 41 of 286 disbursements where we would consider them to be charged to the incorrect GL account. So, what we have from that is we have \$650, all of these were charged to office supplies on the P-Card. They're all P-Card transactions. So, we have \$650 charged to office supplies that were coffee and hospitality supplies, \$758 that were charged for gifts, \$1462 charged for event rentals, \$1439 charged for meals, \$635 charged for dues, \$7 for parking. They were all charged to our office supply. So, I would recommend that perhaps we have budget items specific to those items and budget those one by one in the category that they belong to. So, that concludes all the findings that we have in the report, but we do have a couple of observations just based specifically on things that were brought up at the Council meeting back in May.

One issue that was brought up was regarding staff increases. So, every year the City offers a cost of living increase. We have three employees that received raises outside of the cost of living increase. The first was Mr. Rick Jerue. He was given an increase from \$105,000 to \$120,000 in August of 2018. That

was given right at the time when Mr. Martin had left the City. Mr. Jerue had taken on additional responsibilities, so that was the reason behind that increase. He was below the comparable staff under Mayor Riley's office still with that raise being intact. Next up, we have Mr. Michael Whack, who is the Special Assistant for Quality of Life. He was given a raise on February 10, 2018 where his pay increased from \$68,289 to \$71,703. The PAN form listed this as reorganization of the Mayor's office, shifting of some duties regarding two positions. When asked, we were told that Mr. Whack took on additional managerial roles at the time of that increase. Lastly, we have Mr. Edward Jones, who's a Community Resource Specialist. He was given a raise. He's a part time employee under the Mayor's office, was given a raise from \$12,729 to \$13,977 based on hours that he works. This was listed as a transfer from a temp employee to a part time employee, and we were told that that was just due to the nature of converting him from temp to part time, and he would also have some additional expenses in terms of our retirement system. The other observation that we have in relation to the May meeting was we have four members that were hired under the Mayor's staff that worked on his campaign. We have two of them where a new position was created for Edward Jones, Community Resource Specialist, and for Dexter O'Connell, Administrative Assistant. We have two that filled or replaced current City roles, and that would be Mr. Jack O'Toole and Ms. Robin Griffith.

Some of the conclusions that we had based on all of the findings that we have in this report, first of all, we would like to recommend that the City implement a policy on meals and entertainment regarding when and how those could be used. Perhaps give a limit to that. We'd also recommend some changes to our travel policy, the policy currently dates back to 2008, can be at times cumbersome given there are two different forms to fill out for people who did not receive an advance. The City should look at perhaps considering some other ways to handle travel expenses. Next up, we would like to explore the use of the City seal by the City, just given some of the use with the business cards, perhaps we would want to set guidelines on how and when people can use the City seal for official City purposes. We'd also recommend perhaps implementing a Code of Conduct and guidelines for elected officials. So, the City should consider implementing this in conjunction with rules under the Rules of Conduct by the South Carolina State Ethics Commission to further indicate expectations for the City's elected officials in light of the findings here in this report. These guidelines may relate to the use of the City vehicle, gift giving, entertainment, and meal expense. We'd also recommend creating a transition manual for new mayors who come in or newly elected officials to help provide some of the guidelines that may be overlooked in the transition period. Last up, we would like to recommend exploring different opportunities for the Internal Auditor reporting structure. Given the nature of this audit, there are inherently some independence issues. We'd like to explore having some way for this position to report directly to Council rather than the Mayor to where there would be no independence issues with any department within the City."

Chairman Seekings said, "Thank you, Mr. Majernik. We will have distributed at the close of this meeting a copy of his report. Will we also have a copy of your PowerPoint, or can we get a copy of your PowerPoint. I'd just like to remind everybody on Council that once this is given to you, although not complete, I think there may be a few things that need to be done, including some edits. It will be a public document. So, it will be out there. I just ask each of you to review it before you comment on it, and we will, as I said, readjourn next week on the 25th at 3:00 p.m."

Chairman Seekings recognized Councilmember Moody.

Councilmember Moody asked, "Mr. Chairman, how will we distribute this? Will it be on our website?"

Chairman Seekings said, "You are going to get a hard copy today."

Councilmember Moody said, "I know we'll get one right now. I'm talking about the press, the public. Is it going to be on our website after this meeting?"

Chairman Seekings said, "We'll make sure we post it the same way we post our minutes, I think is probably the best way to get it out there. I think that's the best thing to do, and then we'll put it as an addendum. I would ask that before you go dive into that, let's hear from Mr. Burchstead, or I'm sorry, Ms. Herdina. Is there anything for Mr. Majernik? He will in fact also be here at 3:00 next Thursday, so any questions of him, I would just ask that you collect, think about, review, write down, memorize, and ask him when he's here. That will give everybody a chance to do whatever they need to do in terms of fact gathering. I did see a hand up before I go to Mr. Burchstead."

Chairman Seekings recognized Councilmember Griffin.

Councilmember Griffin said, "I just want to reiterate, this is still technically draft form, and Mr. Majernik has not completed his investigation, is that correct? You still have some things to look at?"

Mr. Majernik said, "We have gone through every expense within the Mayor's audit division, however, there are some open items with the e-mails that were provided less than a week ago."

Chairman Seekings said, "Again, just to caution everybody, this does have 'draft' on the front, so it is likely there may be some additions, deletions, some clarifications. So, again, just please, Councilmembers, be cautious of that."

Mr. Majernik said, "I'd like to add one more thing. As you guys are reviewing this, if you have any questions, we'd like that you please let us know by Friday of this week if you could, so we can make sure we have answers for that next Thursday."

Chairman Seekings said, "I might say in terms of form, it would probably be best if you can get the bulk if not all of those questions to Mr. Majernik in writing, so he can then recite the question and then his answer. Is that fair enough? I see our Clerk has a hand raised and a question. I'm going to always turn the microphone over to our Clerk."

The Clerk said, "Thank you. So, I do have a question because there was a question from Councilmember Moody as to when this would be issued to the public. So, are you saying that we will issue this to the public tonight?"

Chairman Seekings said, "Yes, this is now a public document."

The Clerk said, "And post it on the website."

Chairman Seekings said, "Yes ma'am. I think this is now a public document. We've had a public hearing, we've had a presentation of it. This document is now public, but please, I would caution the press and anybody else out here, it is public, it is a draft, it is not final. With that, I'm going to turn it over to Ms. Herdina. Thank you very much."

Susan Herdina, Corporation Counsel, said, "Thank you. Good afternoon. The reason that I'm here this afternoon is because shortly after Council made the request for the audit, and we started looking at some of the documents, questions were raised to me about what sort of implications the audit would have with the South Carolina Ethics Act. I felt that, as you all know, the Legal Department represents both the Mayor's office, as well as City Council, and I felt that it was important to ask for outside counsel to assist in the review of the audit findings to avoid any actual or perception of a conflict. In that regard, Mr. Michael Burchstead is here today and is going to talk to you and has also written an opinion that was recommended to me. I had not worked with Michael before. He is an attorney largely practicing in Columbia for the last couple of years or a number of years, but he came highly recommended. I feel that his experience is exactly what was needed in this particular case. He is currently practicing with a law firm in Columbia called Collins & Lacy and is head of their government ethics and compliance practice. He's been there for several years. Prior to that time and probably most importantly for our purposes is that he was General Counsel to

the South Carolina Ethics Commission. In that position, he was responsible for prosecuting all civil complaints that were heard by the South Carolina Ethics Commission. He was also responsible for issuing advisory opinions, and he frequently took phone calls from public officials, public employees, and candidates who had questions about the application of the Ethics Act. He was in that position for about three years. Prior to that time, he was with the South Carolina Attorney General's Office. He's a 2005 graduate of the University of South Carolina Law School. I went to Notre Dame, but that's okay. He's also a graduate of the College of Charleston, so he has a little local flavor. He's going to give you a brief summary of his findings based on the preliminary report that Robert has presented to you all today. He has a written opinion, and we will distribute a copy to you this afternoon also. It's a companion document to the audit findings, and I would ask that you read that carefully. That also will be a public document that will be posted on the website. Similarly to what was just discussed with Robert, if you have some questions about his opinion or anything that's contained within his findings, please send your questions to me ideally by Friday. Michael will be back here next Thursday, and he can discuss legal issues further at that time, and I believe is happy to do so. With that said, I'd like to turn this over to Michael. Thank you."

Chairman Seekings said, "That's fine. Mr. Burchstead, welcome. Thank you. I'm going to set a rough time for you of about ten minutes. Does that suit you okay?"

Michael Burchstead asked, "Okay, will you give me a signal?"

Chairman Seekings said, "I'll give you an eight minute signal. How about that?"

Mr. Burchstead said, "Okay. That sounds good."

Chairman Seekings said, "Awesome. Thank you."

Mr. Burchstead said, "Well, thank you everybody. I appreciate being here. I appreciate that the City thought of me to try to evaluate the issues that were brought up in the audit. At the outset, I just want to talk about what I see my role as and what the legal department has really seen my role as. Mr. Majernik has done some diligent work for several months in accordance with the wishes of Council to basically do a broad, wide sweeping audit of the Mayor's office. What my role, I see, is to look at those findings and to see if they raise any legal concerns, particularly under the Ethics Act. I would say, first of all, there are some findings which may raise potential concerns under the Ethics Act. I think it's very important that the Mayor has not been given a chance to respond to these. Neither I, nor anybody else in this room has the authority to say that someone has violated the Ethics Act or not violated the Ethics Act. What I am trying to identify and evaluate through my experience is to try to cull down the issues that may raise a concern, and you know, potentially some of the issues that may not raise a concern, but just really to give the initial framework on this but really, as far as the ethics condition is concerned, there is an administrative process for complaints under the Ethics Act or potential violations of the Ethics Act. That process has a due process component to it. There are many different layers from initial valuation to investigation to a determination of probable cause, and right now, I'm not trying to make any conclusions. I'm just trying to raise issues. So, first of all, although the Ethics Act was my initial focus, it's kind of hard to really even get into evaluation without addressing what some of the Councilmembers were saying at the May meeting was that the Mayor, through certain actions, was violating City personnel policies. Of course, we have a strong Mayor form of government here, and I think under that strong Mayor, the Mayor is certainly the chief administrative officer of the City. The statute provides the Mayor with pretty broad authority. I wouldn't say limitless authority, but under the statute, the Mayor has significant discretion with regards to spending, personnel decisions, and other matters regarding the City. In addition to that, so many of these personnel policies in the City seem to me to apply to City employees. I mean, the Mayor is not a City employee, and really, it's not apples to oranges talking about the Mayor as being an employee. He was put here by the people. He wouldn't have any grievance procedures. So many of these City employee policies apply to an employee that has to be at his desk or her desk between 9 and 5. The Mayor is always the Mayor, just as Council people are always Council people. Really, the activities just have to be seen in a different light.

Now, along with that, with that recognition that the Mayor is an elected employee, several court cases talk about that elected officials are different. Elected officials are subject to the will of the people. I mean if you don't like what an elected official is doing, the voters can exercise that choice at the ballot box. I think it's unlikely that a lot of these personnel policies apply to the Mayor. I will say that some of these court cases on the broad discretion of elected officials do apply to County government, and the language in the County Home Rule Act is a little different than that in the Municipal Home Rule Act. So, I wouldn't say it is a well settled question, but I am firmly of the belief that most personnel policies don't apply to the Mayor, but certain things do apply to the Mayor. One, there is just the concept that the Mayor potentially with spending authority, I mean he is a trustee of public funds, he's expected to use due diligence as to the disposition of these public funds. As part of that due diligence, some issues identified by Mr. Majernik were questioning whether certain expenditures were for a public purpose because all expenditures need to be for a public purpose, not a private one. I can identify two that I saw. I'm not limiting it to two, but the ones that jumped out to me were a birthday party for a private individual and celebrating another private individual's birthday by purchasing an ad in The Chronicle. With those two, there is no obvious public purpose to me, but again, the Mayor hasn't had a chance to respond. I think it's important that he does have a chance to respond and be given the opportunity to articulate a public purpose.

Getting to the Ethics Act, which is really what I was brought in here for -----”

Chairman Seekings said, “And within the two minute warning.”

Mr. Burchstead said, “I'm already at the two minute warning. My apologies there. Getting to the Ethics Act, I would say that the major issue raising potential concern is the fact that the Mayor's wife, Mrs. Tecklenburg, is on the board of a non-profit, and the Mayor either, depending on how you would argue it, used his position or participated in a decision to increase the funding for that non-profit. Under the Ethics Act, a public official can't use his or her position to affect the economic interest of a family member. In this case, this would be affecting the economic interest of a business with which he is associated because a family member is serving on a board that is a business with which the Mayor is associated under the Act. There were certain decisions related to a non-profit where the Mayor might have served as an honorary or ex-officio member, and those decisions would be excluded from the application of the Ethics Act. There is a potential decision that was highlighted related to the fact that Mrs. Tecklenburg serves on the advisory council of a non-profit, and I don't think that falls under the Ethics Act either because an advisory council is not a director or an officer. Some of these expenditures that were really brought to light, there's a laptop that Mrs. Tecklenburg apparently used for a month and then couldn't really get it to work properly and gave it back. There's the expenditure for the business cards, and then the travel expenditures. All of these were done and undertaken from what I see as Mrs. Tecklenburg's perceived, in her mind, service to the City. Really, from what I can see, neither the Mayor, nor the First Lady, or just Mrs. Tecklenburg, or however you want to describe her, don't have any outside business interests as far as I can tell. It seems like full time their actions and everything is undertaken out of service to the City. Now, some Councilmembers have questions whether a Mayor's spouse taking such an involved role in the City as Mrs. Tecklenburg is described to have taken, whether that's proper. I see it as raising some issues. I mean I certainly see the concern, but I don't see it as raising an issue under the Ethics Act necessarily. Also, as far as application of the Ethics Act, going back to it, you've got to talk first and foremost about the concept of economic interest. I don't see from what I can tell, and again, this is a preliminary report, that the Mayor or Mrs. Tecklenburg has personally gained any economic interest from any action. What I see is, right or wrong, Mrs. Tecklenburg is accompanying her husband on official travel. Certainly the expenses that were not reimbursed, or only very recently reimbursed, may raise a concern of a violation, but still, on one level I don't see it, I don't know. It's hard to say major because major is different to different people, but I don't see any self-dealing. I don't see any pervasive conduct. What I see is relatively small dollar amounts, and at least the intent, as it appears to me, is that this is City business. I think, Council, it's appropriate to debate the procedures for certain reimbursement. I think it's appropriate to debate whether the City should be paying up front any costs for people who aren't public officials or public employees of the City, but these

costs, and I would say the travel costs may be of a little bit more concern than the laptop or the business cards. Still, all three were done out of the perceived service to the City from what I can tell. I know that I've run over my time, and I just want to close it out with what I said at the beginning. I think it's important that any kind of discussion of what happened here shouldn't begin with the statement that the Mayor did anything or did not do anything in violation of any kind of law. I mean I think this is a good start to the discussion. The audit still has some additional documents to look at, and as that proceeds, I will, as well, but I thank you for your time, and I appreciate your attention to these issues."

Chairman Seekings said, "Alright. Thank you very much. Some procedural questions we have. Yes, sir."

Chairman Seekings recognized Councilmember Waring.

Councilmember Waring said, "Do we get to ask any questions of the Internal Auditor?"

Chairman Seekings said, "What I would like to do, if that's okay with you, is receive this report. He will be back here next Thursday at 3:00 p.m. If you have some procedural questions as to how we got here, great. Of course, this is our committee of the whole, but I think we're generally agreed if we're going to, under our rule, have reasoned and diligence response to this, I would ask that each of you review it. But if you have a question about procedure and how it got here, I think that's fair game. Other than that, I would ask that you reserve until next Thursday."

Councilmember Waring said, "I can direct my question to the Internal Auditor. Thank you."

Chairman Seekings said, "Thank you. And I think Mr. Majernik will be here. Mr. Burchstead will be here. Ms. Herdina will be here. All of us after we review will be here in whatever capacity. The Mayor will have a chance to review and take whatever action he thinks necessary in seeking counsel, and I think at that point we'll have had ten days, eight days, under our belts to look through this. Please if you have any substantive questions, to the extent you can, although we will except any questions next time when we come, get them to Ms. Herdina or Mr. Majernik in writing. Again for the public, thank you for coming. To the extent there's any public question or comment, we do have a City Council meeting tomorrow at 5:00 in West Ashley. We'll be back in the City Council Chamber next month, and then we will have another meeting of this Audit Committee, a continuation of this meeting, not a new meeting, a continuation of this meeting next Thursday in this Chamber at 3:00 p.m. Unless there's anything for the greater good of the Audit Committee, the City Council, the City of Charleston, I'll take a motion to adjourn."

Councilmember Lewis said, "So moved."

Councilmember Mitchell said, "Second."

On a motion of Councilmember Lewis, seconded by Councilmember Mitchell, the Audit Committee voted unanimously to adjourn at 4:06 p.m.

Jennifer Cook
Assistant Clerk of Council