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April 28, 2026

Susan High-McAuley, Esq.
City Attorney
City of Gallatin
132 W. Main St.
Gallatin, TN 37066

Re: External investigation of complaint by Councilman Jouvence

Dear Ms. High-McAuley:

I have concluded my investigation into the complaint by Councilman Pascal Jouvence. Please allow this letter to serve as my final report in this matter.

This report contains my findings and conclusions. I find that the complaint is without merit, and should be dismissed.

I have reviewed the complaint and the video of the relevant council meeting, along with video of an additional council meeting that I was requested to view by Councilman Jouvence. I interviewed councilmembers, including Councilman Jouvence. I reviewed material provided by Councilman Jouvence's attorney and reviewed a copy of the court order from a case filed by Councilman Jouvence against the City of Gallatin (which I was informed about by Councilman Jouvence). I have also reviewed the City Charter, applicable municipal ordinances, and other relevant materials.

I have attended city council meetings for many cities across Middle and East Tennessee as a significant part of my practice specializing in municipal law. The City of Gallatin meetings are run in a very similar fashion to most such council meetings. The Gallatin meetings I watched follow a proper order, and are appropriately formal and professional without being unnecessarily punctilious, very much the same as how many other Tennessee city councils operate such meetings. In short, the City of Gallatin runs its meetings properly.

Concerning the City Council meeting on April 7, 2026 which is the subject of the complaint, and for the reasons I will discuss in this report, it is my conclusion that there were no substantive improprieties or violations. I find that the complaint should be dismissed. It is my conclusion that the vote on Councilman Jouvence's motion to put Project Phoenix on a referendum in November was handled properly, and the Mayor's inquiry of the City Attorney prior to the roll call vote were not improper. Even if there were more informality than Councilman Jouvence preferred as to that matter, the sole mechanism for him to object was a point of order, which Councilman Jouvence failed to make, and therefore waived any objection by failing to raise a point

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of order during the meeting. This waiver is clearly provided by Robert's Rules of Order, Newly Revised, which the City of Gallatin has adopted. Municipal Code §2-93.¹ Moreover, to the extent there is any question concerning the proper application of Robert's Rules, the Municipal Code confirms that "in no event shall Robert's Rules cause any action of the City Council to be null and void or to otherwise supplant any action of the City Council."

With respect to Councilman Jouvence's motion to move the Project Phoenix matter to a referendum, this attempt reflects a fairly common misunderstanding among elected councilmembers and citizens. I have seen this arise somewhat frequently across the state.

While constituents or councilmembers often feel that a referendum is an appropriate avenue to get public input on an important or controversial topic, Tennessee law actually does not allow a referendum by preference of the elected body. Instead, unless a provision authorizing a referendum is contained in a city's charter, it is extremely well settled as a matter of law that even a unanimously desired referendum is not permissible unless it is specifically authorized by a very short list of state statutes on very specific topics.

The nature of the Project Phoenix does not fall into such a statute as it is presently under consideration, and there is no general referendum authorized under the Gallatin City Charter. Thus, the motion could not have been lawfully approved, because such action would be unlawful. The City of Gallatin simply has no legal authority to submit the proposal in its current form to a referendum.²

In fact, in light of this settled legal principle, the Mayor likely gave Councilman Jouvence more deference on this topic than he was entitled, because a referendum was not on the agenda, no motion was made to modify the agenda, and a motion to authorize a referendum was likely

¹ The current edition of Robert's Rules of Order, Newly Revised is the 12th Edition. Councilman Jouvence's attorney, in materials provided in support of the complaint, quoted from a portion of the rules. However, the language in that correspondence is not quite the same as the language in the current edition, which I did obtain and directly review. Thus, to the extent that Councilman Jouvence is relying on an earlier edition or the quotation is not accurate, the current 12th Edition controls, and I am relying on the 12th Edition for this opinion.

² In discussing this settled principle with Councilman Jouvence, he referenced a sales tax referendum in the past. That is one of the few enumerated permissible topics of a referendum. The Councilman also argued that Project Phoenix cannot be completed without issuance of bonds, and he correctly notes that some general obligation bonds can in some circumstances be submitted to a referendum. However, the motion on April 7, 2026 was not about bonds, no bonds were discussed, and no bond resolution was before the City Council. It is not clear what, if any, bonds might be considered in connection with such a project, and not all bonds may be submitted to referendum. Thus, any motion for referendum on April 7, 2026 was simply improper. Councilman Jouvence's motion to submit the matter to a referendum was, respectfully, out of order as unlawful.

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itself substantively out of order. If anything, the Mayor should have ruled Councilman Jouvence's motion out of order and returned to the prior pending motion.³

Moreover, my specific findings from interviewing councilmembers and from my review of the video are that the vote concerning Councilman Jouvence's motion failed, both as to the voice vote and as to the later roll call vote.⁴ Thus, any alleged informality made no difference in the outcome of the vote. I have interviewed councilmembers concerning their respective votes, and I specifically find that there were not enough affirmative votes during the voice vote to pass the motion, just as there were not enough after the roll call vote. Notably, the City Charter does require the affirmative vote of a majority of the members to approve an action; any member who was silent during a voice vote would not constitute an affirmative vote. Thus, absent four affirmative votes in this session, any action failed. It is very clear from the recording and from my interviews that there were not four affirmative votes during the voice vote, and certainly there were only two affirmative votes during the roll call.⁵

When the Mayor asked for the roll call vote but before any roll call voting actually began, the Mayor paused to seek legal guidance from the City Attorney, during which a brief interaction ensued. The Mayor was authorized to seek that legal guidance, and despite the informality of that request, the Mayor and City Attorney's actions were not improper in any respect.⁶

³ As always, any decision of the Mayor, whether on a point of order or other matter, is subject to appeal to the City Council as a whole, in accordance with Robert's Rules. Thus, the City Council itself is the final authority, and not the Mayor or any individual.

⁴ Even if two councilmen actually had changed their vote from yes to no (which I specifically find did not occur) that is still entirely proper, as "a member has a right to change his vote up to the time the result is announced." RR § 45:8. Thus, any change would have been entirely permissible and proper.

⁵ During my interview Councilman Jouvence indicated his view that silence or abstention would lend support to a matter passing. This is an incorrect understanding of the Gallatin City Charter. At least four actual "yes" or affirmative votes were required. See City Charter, §15.

⁶ It is generally correct that once a vote has begun, "no interruption is permitted from the time that any member has actually voted until all have presumably voted." RR § 45:6. The Mayor's inquiry of the City Attorney which is the subject of the complaint came after the voice vote was fully completed and "all ha[d] presumably voted." Id. After the roll call actually began and "any member ha[d] actually voted" there was again no interruption "until all ha[d] presumably voted." Id. Therefore, I find that the Mayor did not violate this general rule in Robert's Rules concerning voting. But if any councilman believed she did, the proper avenue – and only proper avenue – was to raise a point of order to allow the Mayor to decide. Any disagreement with the Mayor's determination in that regard then could be properly appealed to the rest of the City Council, which as a body is the sole final authority. No point of order was raised. And pursuant to the Municipal Code, no application of any of these principles can nullify the end vote. And as the Chancellor held in Councilman Jouvence's previous lawsuit, the City Council itself was the final authority and "was the appropriate body to submit this dispute over informal practice."

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In fairness to Councilman Jouvence, points of order are extraordinarily rare in City Council meetings in Gallatin and really in almost every Tennessee city. In fairness to him, Councilman Jouvence may not have known the diction to raise an objection. But the uncommon nature of raising points of order in City Council meetings across the State undoubtedly stems from the fact that almost every City Council meeting, in every city, functions very effectively and properly without absolute perfection in parliamentary procedure, just as the City of Gallatin's meeting properly functioned on April 7, 2026. In other words, strict perfection of formality is not the norm, is not required, and is not expected by the City of Gallatin municipal code, which expressly overrides Robert's Rules to the extent the rules are inconsistent with any actual action of the City Council itself. Municipal Code § 2-93.

Regardless, the sole mechanism to challenge any alleged informality of procedure is to formally apply such procedure, and raise a point of order in proper fashion. In other words, if Councilman Jouvence felt that the Mayor as presiding officer of the City Council was not conducting the meeting sufficiently formally, he cannot cure the perceived error by some further informality of his own. Rather than raising a "point of order," Councilman Jouvence said "roll call," calling again for the vote. This statement, respectfully, is not the equivalent of a point of order under Robert's Rules or any other authority.

Simply put, if Councilman Jouvence wanted perfection of formality, it was his obligation to exhibit it himself, and make the formal point of order in the proper fashion.

Councilman Jouvence and his attorney, during my interview with them, were extremely professional and cordial, and I thank them for their cooperation with the investigation and for the information they provided. I respect their argument and position. They frame the Councilman's complaint in serious terms, such as "Separation of Powers," arguing interference with the legislative function by the executive function (embodied in the Mayor).

However, with all due respect, Councilman Jouvence's argument appears to have been foreclosed by a judicial ruling in a previous matter brought by Councilman Jouvence himself. In litigation initiated by Councilman Jouvence against the City previously, the Chancellor for Sumner County specifically ruled that the Mayor is part of the Council, the legislative body. In that presiding capacity, the Mayor cannot possibly "interfere" with a legislative body of which she is herself an active and integral part. The Chancellor stated:

"The Mayor is legally charged with presiding over City Council meetings, and has the enumerated right to take action required by the duties of her office. The Council, of which the Mayor is a member, is charged with the legislative authority of the City, and as such, was the appropriate body to submit this dispute over informal practices."

Jouvence v. City of Gallatin, 25CV-263.

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It is my opinion that this judicial holding forecloses Councilman Jouvence's argument that there was interference by the executive branch with the legislative branch within the City of Gallatin. Further, the Court's holding is instructive as to the proper forum to submit the dispute over informal practices. As Robert's Rules provide, the sole mechanism to object is to raise a point of order to that body, which is waived if not presented timely within the meeting itself. Robert's Rules provide:

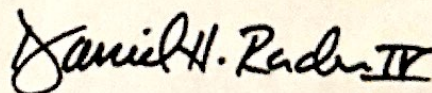
The general rule is that if a question of order is to be raised, it must be raised promptly at the time the breach occurs....Points of order regarding the conduct of a vote must be raised immediately after following the announcement of the vote result." RR § 23:5

This did simply not occur. Even if it had, the Mayor would likely have overruled the point of order, as her inquiry of the City Attorney was itself proper. The Mayor's inquiry did not constitute impermissible debate, but proper inquiry of the City's Attorney as to the privilege and power of the body itself, as to whether it may take an action that is disallowed by law.⁷ If a Mayor cannot ask an attorney if the proposed action is legal, then the system cannot effectively function.

For the foregoing reasons, I respectfully conclude that the complaint is entirely without merit.

Yours very truly,

MOORE, RADER & YORK, P.C.



Daniel H. Rader IV

⁷ The Mayor's inquiry was to the City Attorney, who properly responded. This was all clearly proper. However, the Mayor did not recognize Economic Development Director Bates to participate, and the Mayor would have been within her prerogative as chair to rule Ms. Bates out of order should the Mayor have elected to insist on further formality or should a point of order have been raised insisting on recognition of a speaker. This is immaterial, and as stated throughout, Councilman Jouvence waived any objection by failing to make it, which Robert's Rules clearly requires. He respectfully cannot insist on strict compliance without complying himself.