



CITY OF DELAWARE CITY

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**MINUTES
CITY OF DELAWARE CITY
SPECIAL MAYOR AND COUNCIL MEETING
JANUARY 12, 2017**

CALL TO ORDER – MAYOR AND COUNCIL MEETING

The Honorable Mayor Green called to order the Special Meeting of the Mayor and Council at 6:00 pm.

PLEDGE OF ALLEGIANCE

Mayor Green led the Pledge of Allegiance to the Flag.

ROLL CALL

Present were The Honorable Mayor Green and Council Members Greene, Fitzwater, Malinowski, and Barrett. City Manager Cathcart, Police Chief Baylor, City Secretary Gwynn and Acting City Solicitor Griffiths were also in attendance.

CONSIDERATION AND POSSIBLE VOTE ON AN APPEAL OF THE BOARD OF ETHICS DECISION DATES 11/16/16

Executive Session

Council Member Greene made a motion to go into an Executive Session. Council Member Barrett seconded the motion. A roll call vote was taken, all ayes, motion carried at 6:02 pm.

Reconvene Special Mayor and Council Meeting

Mayor Green reconvened the Special Mayor and Council Meeting at 6:40 pm. He reminded the Council Members that the information that was just discussed is confidential and they have an obligation not to divulge any of these proceedings. He said they are restricted to talk about the topic listed for the special meeting only among themselves, if they were to go back into an Executive Session.

Acting City Solicitor Griffiths asked for the record to reflect that the Rule of Necessity is being invoked, in that Council Members are being required to vote on an issue in which they were found by the Ethics Board to have violated the City's Ethics Code. Tonight all Council Members must vote and therefore, being required to do so, there will be no ethical violation as long as each Council Member divulges any perceived ethical or conflict of interest prior their vote.

Mayor Green commented about the Council's concern regarding the amount of taxpayers' money that has already been spent on this issue.

*Council Member Greene made a motion authorizing the City Solicitor to appeal the Ethics Board's ruling. Council Member Fitzwater seconded the motion. There was no discussion. A roll call vote was taken, with the Council Members voting as follows: Greene – Stating that she was one of the Council Members that was accused, due to bias, of violating the Delaware City Ethics Code, voted **Aye**; Fitzwater – Stating that he was found guilty of not being impartial by the Delaware City Board of Ethics, based on their biased opinion and not on the facts presented to them, and his integrity has been questioned, voted **Aye**; Malinowski – Stating that he appreciates fellow Council Members' right to appeal, but he can't see spending more of the taxpayers' money, and added that he has no conflicts or prejudices, voted **Nay**; Barrett – Stating that she was wrongly accused as she didn't do anything wrong and the Board of Ethics made the wrong decision, voted **Aye**.*

Mayor Green said the vote was three ayes and one nay. However, as the Mayor of Delaware City, he has the right to say yes or no to veto this. He said if he decides to veto, he understands he must explain to the citizens and Council the reason for his veto, knowing that a 4/5 vote of Council would override his veto. Mayor Green asked Acting City Solicitor Griffiths to confirm that there is a quorum this evening. It was confirmed.

RECESS SPECIAL MEETING

Mayor Green said he was going to recess the meeting for five minutes, allowing him sufficient time to review his notes and put some thoughts together. *Council Member Fitzwater made a motion to recess the Special Meeting. Council Member Malinowski seconded the motion. A vote was taken, all ayes, motion carried. Meeting recessed at 6:47 pm.*

RECONVENE SPECIAL MEETING

Mayor Green reconvened the Special Meeting at 6:55 pm.

Mayor Green thanked the Council Members for attending and for being candid with their remarks and questions. He said he wished this had taken place a couple of month ago. He said some of the important words and phrases he heard were "integrity", "falsely accused", "a matter of principal", "the cost", and "risk analysis". He said risk analysis is extremely important to him and for the taxpayers and the business owners. He said that after listening to all the Council Members and weighing what is in the best interest of the City and its taxpayers, he is exercising his right to veto as Mayor, under Charter Section 3-03 of the Delaware City Charter. His decision is predicated on the facts associated with economical, due process and good common sense, realizing that our citizens who work hard, pay taxes and trust them all to perform their jobs. In addition, as the chief executive of the City, his responsibility is not only to the Council but to the citizens. Therefore, as mentioned, he said he was vetoing this resolution to appeal the Board of Ethics decision on 11/16/2016, realizing that the Council could override his decision.

Acting City Solicitor Griffiths concurred and said that the Mayor's right to veto is not absolute, but can be overridden by the Council with a 4/5 or 80% vote. That would mean a unanimous vote would be needed as there are only four Council Members present. Council Member Fitzwater asked if that would change if Council Member Titus had been present. Acting Solicitor Griffiths said that even with Council Member Titus, there would need to be four aye votes to override the Mayor's veto. *Council Member Greene made a motion to override the Mayor's veto and move forward with the appeal. Council Member Fitzwater seconded the motion. Discussion followed. A roll call vote was taken with the Council Members voting as follows: Greene – aye, Fitzwater – aye, Malinowski – nay, and Barrett – aye. The Mayor's veto holds.*

Acting City Solicitor Griffiths explained that when the Mayor exercises his veto right, he must submit the veto and the reasoning in writing. He asked him to submit that to the City Solicitor's office. He also asked to have the footnote from the agenda incorporated into the official record as well as the notice that was given out for the meeting. That footnote was as follows: "This special meeting is being posted on less than 7 days notice because the appeal period at issue will expire before the next regularly scheduled council meeting. The request to consider an appeal was made on Friday, January 6, 2017 by a councilperson and due to the time needed to prepare and file an appeal before the appeal deadline, as much notice as possible under the circumstances has been given for this meeting."

Council Member Greene asked if they have any recourse. Acting City Solicitor Griffiths replied that they could each take on an appeal individually, but the City would not be able to pay for it. He said they would need to file by Wednesday.

Council Member Greene asked if they would need to file individually. Acting City Solicitor Griffiths advised her to seek counsel.

Council Member Comments

Council Member Fitzwater said he would like the record to reflect that he has personally exhausted all other options to resolve this issue. He is truly saddened by the current state of this town's government and the unjust decision made by the Board of Ethics. It is the responsibility of the citizens to vote for people that will best represent them to prevent these injustices from taking place in the future.

ADJOURNMENT

Council Member Fitzwater made a motion to adjourn the Special Mayor and Council Meeting. Council Member Greene seconded the motion. A vote was taken, all ayes, motion carried. The meeting was adjourned at 7:05 pm.

Respectfully submitted,
Dawn K. Gwynn
City Secretary