
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
SEPTEMBER 26, 2011**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Schoeffel at 5:00 p.m. in the Dana Point City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point.

ROLL CALL OF CITY COUNCIL MEMBERS:

Present: Mayor Scott Schoeffel
Mayor Pro Tem Lara Anderson
Council Member Lisa Bartlett
Council Member William Brough
Council Member Steven Weinberg

Absent: None

CLOSED SESSION

City Attorney Munoz indicated that there was a need for a Closed Session as follows:

- A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Government Code § 54956.9 (b1), (1 case)
- B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, Government Code § 54956.9 (a), (2 cases) Holistic Health v. City of Dana Point - 30-2011 00445008; Beach Cities Collective v. City of Dana Point - 30-2011 00444134.

Mayor Schoeffel recessed the meeting into a Closed Session at 5:01 p.m. pursuant to Government code Section 54956 et seq.

RECONVENE CITY COUNCIL MEETING - CALL TO ORDER

Mayor Schoeffel reconvened the meeting at 6:11 p.m. All Council Members were present.

CLOSED SESSION ANNOUNCEMENT

City Attorney Munoz reported that in connection with two of the Closed Session items; Holistic Health vs. The City of Dana Point and Beach Cities Collective vs. The City of Dana Point, these cases have been dismissed. He stated that for the benefit of the audience that these were cases involving medical marijuana dispensaries that the City had put a great deal of effort into some litigation involving the dispensaries that the City

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had alleged were operating illegally selling marijuana that was not in compliance with the State's medical marijuana laws. He added that in the course of those cases, it came to the City's attention that the dispensaries were also operating in violation of the State Building Code. He stated that there was a hearing before the Fire Marshal, the Building Official with a retired judge presiding over the matter. He added that the judge had determined that there were serious fire safety threats because of some electronic doors that were installed improperly and without a permit. He stated that in the course of this, Beach Cities and Holistic Health sued the City, the City Council and a number of the City staff. He added that those cases were brought before the court in the last couple of weeks for hearings on the merits of the cases. He stated that the judge had ruled against them and had allowed them to amend their complaints. He added that Beach Cities declined to amend their complaint and has filed a dismissal. He stated that in the Holistic Health case a similar ruling occurred, they did not amend their complaint and time has now passed to do so.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Pat Fairbanks.

INVOCATION

The Invocation was provided by Jens Christy, Associate Pastor/Recovery of Capo Beach Calvary.

PRESENTATIONS AND PROCLAMATIONS

Police Services Public Safety Award

City Manager Chotkevys introduced and provided background on the item. City Manager Chotkevys asked Lt. Levy to join Mayor Schoeffel. Lt. Levy stated that with the support of the City Council and the staff they have been able to build a great team. He introduced the Community Service Unit; Sergeant Greenwood, Deputy Pelayo, Deputy Daruvala, Deputy Cappel, and CSO Levine, and Administrative Sergeant Koehmstedt. Sergeant Greenwood provided details on the success of the *Hide it, Lock it, Lose it* Program. He reported that property crimes were down 40-60% in the City in one year's time. Lt. Levy presented the award Police Services had received for the *Hide it, Lock it, Lose it* Program at the California Crime Prevention Officers Association to the Mayor.

September Business of the Month - Tutor & Spunky's Deli

Lynn Kelly, Senior Management Analyst provided a PowerPoint presentation detailing Tutor & Spunky's Deli. She stated that Tutor & Spunky's had opened in December 1988 in Town Center. She added that in 2006, Tutor & Spunky's moved to their current location in the Blue Lantern Plaza. She reported that since Tutor & Spunky's has opened in 1988 they have served over 875,000 sandwiches to the community. Mayor

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Schoeffel presented Tom Blake with a Certificate of Recognition for Tutor & Spunky's being named the Featured Business of the Month for September, 2011.

Green Business Award presented by Dana Point Earth Ocean Society

Bob Fairbanks representing the Earth Ocean Society, presented a Certificate to Jim Miller in recognition of his efforts to help make Dana Point green by utilizing environmentally friendly products at a substantial expense to his businesses, Coffee Importers and Scoop Deck.

Dana Point Relay for Life Presentation

Richard and Rachel Alonzo presented a plaque to Mayor Schoeffel for the City's support of the Dana Point Relay for Life.

CONSENT CALENDAR

Council Member Brough removed Item Number 7 from the Consent Calendar.

IT WAS MOVED BY COUNCIL MEMBER STEVEN WEINBERG, SECONDED BY MAYOR PRO TEM LARA ANDERSON, ACCEPT ALL ITEMS LISTED ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM NUMBER 7.

The motion carried by the following vote:

AYES: Council Member Lisa Bartlett, Council Member William Brough, Council Member Steven Weinberg, Mayor Pro Tem Lara Anderson, and Mayor Scott Schoeffel

NOES: None

1. WAIVE THE READING OF ORDINANCES AND APPROVE READING BY TITLE ONLY

APPROVED THE READING BY TITLE ONLY OF ALL ORDINANCES ON THE CONSENT CALENDAR AND THAT FURTHER READING OF SUCH ORDINANCES BE WAIVED.

2. REGULAR MEETING MINUTES, SEPTEMBER 12, 2011

APPROVED THE MINUTES.

3. PLANNING COMMISSION MEETING MINUTES, AUGUST 15, 2011

RECEIVED AND FILED.

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4. **PLANNING COMMISSION ACTIONS, MEETING OF SEPTEMBER 19, 2011**

RECEIVED AND FILED.

5. **MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR**

RECEIVED AND FILED.

6. **CLAIMS AND DEMANDS**

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

7. **HEALTH PLAN PROVISIONS FOR CALENDAR YEAR 2012**

Council Member Brough removed this item from the Consent Calendar.

Council Member Brough stated that he would have preferred to pull this item to discuss during the MOU discussion. He asked if approval of this increase will tie the Council's hands in the negotiations in any way.

City Manager Chotkevys replied that it would not.

IT WAS MOVED BY COUNCIL MEMBER STEVEN WEINBERG, SECONDED BY COUNCIL MEMBER LISA BARTLETT, ADOPT **RESOLUTION 11-09-26-01** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, MODIFYING HEALTH BENEFIT PLAN ALLOWANCES FOR ALL ELIGIBLE REPRESENTED AND ALL ELIGIBLE NON-REPRESENTED CLASSIFICATIONS.

The motion carried by the following vote:

AYES: Council Member Lisa Bartlett, Council Member William Brough, Council Member Steven Weinberg, Mayor Pro Tem Lara Anderson, and Mayor Scott Schoeffel

NOES: None

8. **AWARD OF CONTRACT FOR THE CONSTRUCTION OF THE FOUNTAIN IMPROVEMENTS AT LA PLAZA PARK PROJECT**

AWARDED A CONTRACT FOR THE CONSTRUCTION OF THE FOUNTAIN IMPROVEMENTS AT LA PLAZA PARK PROJECT WHICH WAS INFORMALLY BID, AUTHORIZED THE CITY MANAGER OR HIS DESIGNEE TO

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ADMINISTER THE CONTRACT WITH APPROPRIATE MONITORING, TESTING, INSPECTION, AND CHANGE ORDERS UP TO THE LIMIT OF FUNDS SHOWN IN THE FISCAL SECTION; AND TRANSFERRED PROJECT FUNDING PER THE FISCAL IMPACT SECTION.

PUBLIC COMMENTS

Iggy Israel, Capistrano Beach, spoke regarding Dana Strands gate and closure. He felt that the City has spent enough money litigating this issue. He asked the City Council to drop the appeal, stop wasting public funds, and leave the Headlands open to the public.

Carlos N. Olvera, Dana Point, announced that on Sunday from 11 a.m. to 4 p.m. the 12th Annual Historical Home tour will take place. He stated that the tour will be of seven homes in Monarch Bay Terrace. He added that there will also be a classic car show in Monarch Bay Plaza. He encouraged everyone to come out.

Joe Snyder, Capistrano Beach, complimented the City on the BBQ event this past Saturday. He announced that a car wash will be held on Saturday, October 1st from 9 a.m. to 3 p.m. at South Shores Church that will benefit Marine Aircraft Group 39 stationed at Camp Pendleton. He reported that two marine pilots were lost in a cobra accident a week ago on base; Lieutenant Heitmann and Captain Bland. He stated that contributions were being accepted for the family of Captain Bland who left behind a wife and a four month old baby girl. He added that the next service officer meeting for Veterans will be held on Tuesday, October 4th from 1 p.m. to 4 p.m. at the Community Center. He stated that an Army Ranger from Dana Point was killed in Afghanistan this past week, Sergeant Tyler N. Holtz and that Andrea Swayne from the Dana Point Times had written an excellent article about Sergeant Holtz.

PUBLIC HEARINGS

There were no Public Hearing items.

UNFINISHED BUSINESS

There were no Unfinished Business items.

NEW BUSINESS

City Attorney Munoz responded to the comments made by Mr. Israel. He stated that there was a lot of misinformation about the Strands gate. He clarified that he does not represent the developer. He stated that any time the Strands beach is open, there is public access.

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9. SINGLE USE PLASTIC BAG DISPOSAL

City Attorney Munoz recused himself from this item due to a potential financial conflict of interest and announced that Assistant City Attorney Jennifer Farrell would be replacing him on this item. He left the Council Chambers at 7:12 p.m.

City Manager Chotkevys introduced the item and Director of Public Works Fowler provided a staff report.

Mayor Schoeffel opened the Public Comments.

Pat Fairbanks, Dana Point, spoke regarding the activities of the Earth Ocean Society. She recommended that everyone carry the reusable bags when shopping to eliminate the need of plastic bags. She felt that it was a matter of education.

Ross Teasley, Dana Point, stated that the single use plastic bag made the Guinness Book of World Records in 2009 as the single most ubiquitous consumer product on the face of the Earth. He felt that plastic bags should be banned from being used in the City and he reported that less than 5% of the plastic bags were being recycled.

Dick Dietmeier, Dana Point, felt that the City needed to adopt an Ordinance that says what is to be done, a timeline of how it is to be done, and figure out where to get the reusable bags.

Wayne Rayfield, Dana Point, encouraged the City Council to adopt the ban of plastic bags. He felt that public education, subsidization, and rebates for merchants to help offset the costs associated with the ban would help make this successful.

Carlos N. Olvera, Dana Point, spoke about the use of plastic bags.

Michael Sean Weicht, Dana Point, supports the ban on plastic bags.

Mayor Schoeffel closed the Public Comments.

Council Member Bartlett felt that Director Fowler's idea of holding a forum or workshop with residents, business owners, and the Chamber of Commerce was an excellent idea so when this item returns to Council we can make an informed decision based on a collaborative process. She stated that the City should consider some sort of program with the hotels and timeshares to provide the reusable bags for our visitors to use.

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Council Member Weinberg felt that the voluntary action doesn't work. He stated that the City Council needed to adopt an Ordinance to ban the plastic bags and Styrofoam. He made a motion to direct staff to draft an Ordinance banning the use of plastic bags and Styrofoam.

Mayor Pro Tem Anderson seconded Council Member Weinberg's motion for the purpose of discussion.

Mayor Pro Tem Anderson felt that the elimination of the plastic bags was a non-issue. She stated that the real question was what a fair timeline was for merchants and for the implementation.

Council Member Brough stated that he was opposed to government becoming the nanny-state. He felt that there needs to be more personal awareness and personal responsibility taken by the public. He added that he would support heavy fines for dumping trash and more communication, outreach and support with groups such as Zero Trash and the beach cleanup. He stated that a detailed cost benefit analysis was needed on this issue.

Mayor Schoeffel felt that any time you tell people that they can't do something as a governmental entity there should be some strict and appropriate scrutiny of the measure behind that and like everything it should be contextualized. He felt that littering was different when you live on the coast as opposed to inland. He stated that if someone were to litter at the coast, it ends up in the ocean with little chance of being retrieved.

City Council Member Bartlett felt that a cost analysis has many moving pieces to the puzzle. She stated that she wanted to direct staff to hold a workshop and a focused forum to engage the community and the people who are affected and involved.

Director Fowler clarified that part of the process that staff is seeing in these other Ordinances is if you use a paper bag, the bag will cost you 10-15 cents apiece. He stated the extra revenue will go back to the business to help pay for the added cost of providing options other than plastic bags.

City Manager Chotkevys stated that he would suggest engaging the Dana Point Destiny group on this issue.

Council Member Weinberg stated that he would amend his motion if this item was brought back in 30-60 days to Council.

Mayor Pro Tem Anderson stated that the focus needs to be on the implementation plan.

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Council Member Weinberg felt that the chain stores could make the change overnight but the smaller businesses would need more time.

City Manager Chotkevys felt that staff could provide a draft Ordinance by the first meeting of December. He stated that Dana Point Destiny would concentrate on the implementation.

Assistant City Attorney Farrell stated that some level of environmental review will need to be done, at least an Initial Study and likely a Negative Declaration. She clarified that no decision has been made right now on banning plastic bags that Council was only providing direction to staff to return with a proposed Ordinance.

Council Member Weinberg clarified his motion to direct staff to consult with Dana Point Destiny, begin environmental analysis required by CEQA, and return with draft ordinance no later than December 12.

IT WAS MOVED BY COUNCIL MEMBER STEVEN WEINBERG, SECONDED BY MAYOR PRO TEM LARA ANDERSON, DIRECT STAFF TO CONSULT WITH DANA POINT DESTINY, BEGIN THE ENVIRONMENTAL ANALYSIS REQUIRED BY CEQA, AND RETURN WITH A DRAFT ORDINANCE ADDRESSING THE USE OF PLASTIC BAGS AND STYROFOAM NO LATER THAN DECEMBER 12, 2011.

The motion carried by the following vote:

AYES: Council Member Lisa Bartlett, Council Member Steven Weinberg, Mayor Pro Tem Lara Anderson, and Mayor Scott Schoeffel

NOES: Council Member William Brough

City Attorney Munoz returned to the Council Chambers at 8:08 p.m.

STAFF REPORTS

City Manager Chotkevys reported that he had attended the League of California Cities Annual Conference last week. He felt that the best sessions were the breakout sessions.

City Attorney Munoz stated that he was also at the league conference. He added that there was an interesting discussion about a case that had just come out last week relating to day laborers. He stated that the 9th Circuit Court has changed their position from 1986 and now believes that it was not possible to have a content-neutral

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Ordinance on this topic. He felt that the ability to regulate the issue has been impaired by this most recent case.

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Council Member Weinberg stated that he had turned in his list of meetings attended to the City Clerk. He reported that he was one of the judges at the Kansas City BBQ and felt that it was a challenge to eat so much in a two hour period. He added that he had learned a lot about BBQ that he didn't know. He thanked staff for putting on a great event.

Council Member Bartlett reported that she had attended the following:

Several TCA, SCAG, and ACC-OC meetings
September 14 - South Orange County Regional Chamber of Commerce Breakfast and the Surterre Ribbon Cutting Ceremony
September 21-22 - League of California Cities Annual Conference
September 24 - Dana Point BBQ Championship in Sea Terrace Park

She announced the following future events:

September 30 – Da Vine Ribbon Cutting Ceremony
October 15 - Taste of Brews International Beer event in Lantern Bay Park. The Ocean Institute is the charitable partner for the event and for more information or tickets go to www.tasteofbrews.com

She encouraged everyone to check out the Dana Point Parks and Recreation guide for all of the great fall and winter events planned in the City.

Mayor Pro Tem Anderson reported that there is the car wash on Saturday from 9 a.m. to 3 p.m. at South Shores Church and Sunday is the Dana Point Historical Society home tour from 11 a.m. to 4 p.m. She announced that on Saturday, October 15 the 11th Annual Tail of Two Cities fundraiser for the animal shelter will be held. She stated that tickets must be purchased ahead of time and to go to www.petprojectfoundation.org. The event will be held at the Dana Point Yacht Club.

Council Member Brough reported that he attended the following events:

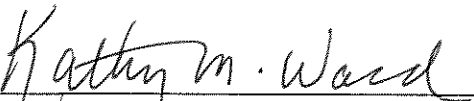
Surterre Properties Ribbon Cutting
September 15 - Chamber Mixer at Proud Mary's
September 21-22 - League of California Cities Conference
September 23 - Pre-BBQ Fish Fry
September 24 - BBQ; he congratulated the City team

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Mayor Schoeffel stated that the canine vaccination clinic was an awesome deal. He encouraged everyone to Google Dana Point Symphony and you will find a link that tells all about the new Dana Point Symphony.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Schoeffel declared the meeting adjourned at 8:22 p.m. and announced that the next Regular Meeting of the City Council will be held on October 10, 2011, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.



KATHY M. WARD
CITY CLERK

APPROVED AT THE MEETING OF OCTOBER 24, 2011

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Meetings Attended Since the September 12, 2011 City Council Meeting:

Council Member Lisa Bartlett

Several TCA, SCAG and ACC-OC meetings
September 14 South Orange County Regional Chamber of Commerce Breakfast
Surterre Ribbon Cutting Ceremony
September 21-22 League of Cities Annual Conference
September 24 Dana Point BBQ Championship in Sea Terrace Park

Council Member Steven Weinberg

September 14 OCFA Budget and Finance
Ribbon Cutting for Grand Opening of Surterre Properties
September 15 Vector Control Board of Directors
September 23 Kansas City BBQ "Fish Fry"
September 24 Kansas City BBQ

