
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 1, 2012**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Anderson 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 Lara Anderson
Mayor Pro Tem Steven Weinberg
Council Member Lisa Bartlett
Council Member William Brough
Council Member Scott Schoeffel (*arrived at 5:01 p.m.*)
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 REAL PROPERTY NEGOTIATOR, Government Code § 54956.8 Location: 34202 Del Obispo, Dana Point Agency Negotiator: City Manager and City Attorney Negotiating Parties: City of Dana Point and Alvarez & Masal Capital Real Estate, LLC Under Negotiation: Price and terms of possible acquisition of real property

Mayor Anderson 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 Anderson reconvened the meeting at 6:01 p.m. All Council Members were present.

STAFF PRESENT: Douglas C. Chotkevys, City Manager; A. Patrick Munoz; City Attorney; Kathy Ward, City Clerk; Mike Killebrew, Assistant City Manager; Mike Rose, Director of Disaster Preparedness; Lt. Lynn Koehmstedt, Police Services; John Tilton, City Architect; Brad Fowler, Director of Public Works/Engineering; Kevin Evans, Director of Community Services and Parks; John Tilton, City Architect; Mark Sutton, Building

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Official; Jackie Littler, Executive Secretary; DyAnne Weamire, Administrative Secretary; and Bobbi Ogan, Deputy City Clerk

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Gene Burrus.

INVOCATION

The Invocation was provided by Associate Pastor Sabrina Vasta of Gloria Dei Lutheran Church.

PRESENTATIONS AND PROCLAMATIONS

Volunteer of the Month - Bob Fowler

Administrative Secretary Weamire provided a PowerPoint presentation detailing Bob Fowler's military background and his volunteer efforts with VFW Post 9934. She stated that Bob joined Post 9934 in 2006 and since then he has held several positions. She added that during his service as Commander from 2009-2011 Bob was recognized by the Veterans of Foreign Wars United States as the All-State Team Post Commander for two consecutive years as well as the All American Post Commander. She stated that Bob's most notable community contribution was conceptualizing and fundraising to bring the American Vietnam Traveling Tribute Memorial Wall to Dana Point. She added that the Wall brought over 35,000 visitors to the city. Mayor Anderson presented Bob with the "Making a Difference" award and a Certificate of Appreciation for his efforts in the lives of the Veterans and his contributions to VFW Post 9934.

CONSENT CALENDAR

Council Member Brough removed Item 11 and a member of the public removed Item 12 from the Consent Calendar.

IT WAS MOVED BY MAYOR PRO TEM STEVEN WEINBERG, SECONDED BY COUNCIL MEMBER LISA BARTLETT, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON CONSENT CALENDAR WITH THE EXCEPTION OF ITEMS 11 AND 12.

The motion carried by the following vote:

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

NOES: None

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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, APRIL 17, 2012**

APPROVED THE MINUTES.

3. **PLANNING COMMISSION MEETING MINUTES, APRIL 9, 2012**

RECEIVED AND FILED.

4. **PLANNING COMMISSION ACTIONS, MEETING OF APRIL 23, 2012**

RECEIVED AND FILED.

5. **OCEAN WATER QUALITY SUBCOMMITTEE ACTION MINUTES, NOVEMBER 22, 2011**

RECEIVED AND FILED.

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

RECEIVED AND FILED.

7. **CLAIMS AND DEMANDS**

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

8. **DANA POINT DESTINY AD HOC COMMITTEE MINUTES, NOVEMBER 30, 2011**

RECEIVED AND FILED.

9. **ARTS AND CULTURE COMMISSION MINUTES, MARCH 21, 2012**

RECEIVED AND FILED.

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10. **SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT TO INCLUDE MODIFICATIONS TO ZONE TEXT AMENDMENT ZTA07-02 AND ZC07-01 FOR THE PROPERTY LOCATED AT 34202 DEL OBISPO STREET AND INCORPORATING NEW ZONING CATEGORY IN THE ZONING CODE AND AUTHORIZING SUBMITTAL OF THE ORDINANCE TO THE CALIFORNIA COASTAL COMMISSION FOR FINAL CERTIFICATION**

HELD A SECOND READING AND ADOPTED ORDINANCE 12-06 ENTITLED:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENTS ZTA07-02 AND ZONE CHANGE ZC07-01 AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA07-01 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

11. **SECOND READING AND ADOPTION OF THE UPDATED VERY HIGH FIRE HAZARD SEVERITY AND EMBER ZONES MAP, MAKING AMENDMENTS THERETO, AND RELATED ACTIONS**

Council Member Brough removed this item from the Consent Calendar.

City Manager Chotkevys provided a staff report.

Mayor Anderson opened the Public Comments.

Ingrid McGuire, Dana Point, stated that she and her neighbors continue to be very concerned about the adoption of this ordinance. She felt that the onus would be put on the homeowners and that little would be done to create a true fire break.

Mayor Anderson closed the Public Comments.

Council Member Brough stated that his biggest concern with this item is that it puts the onus on the homeowner when the real fire threat is the vegetation in the surrounding canyon and Laguna Niguel. He felt that the City should discuss this issue further and see if there are other options.

Council Member Schoeffel agreed that anything the City could do to reduce risk of fire would be very appropriate. He asked if there was any substantial evidence in the record which would support the City not adopting this measure that was adopted by State law.

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City Attorney Munoz replied that the Law states under Section 51179 of the Government Code that the City Council can exempt homeowners if there is substantial evidence to support findings. He stated that the code does not allow the Council to not adopt the map, only exempt properties in the area from compliance. He added that there were no cases of cities not adopting the map. He stated that if the City Council chooses to not adopt the map that there may be legal consequences. He added that his concern is that some could say that the City Council failed to exercise a mandatory duty which is one of the exceptions to the Tort Claims Act.

Building Official Sutton added that FEMA had provided a major portion of the funding for this updating effort and that FEMA may not be inclined to help rebuild if there is an issue. He stated that if there is no new development the existing homes will not be affected. He reported that staff was working with Orange County Fire Authority to develop a program voluntarily getting the residents involved to do the exterior fortification. He stated that he hoped to have a four-step program in place by the June 19 meeting with the Monarch Bay Terrace Association. He added that insurance representatives have said that they don't use the fire zone severity maps because they aren't updated often enough.

City Manager Chotkevys stated that he had asked staff to work with OCFA to create a Dana Point specific tool box approach that the City could offer to the residents that brings the various trade people together so that the City could provide assistance. He added that one of his concerns is not just Monarch Bay Terrace but the area in Monarch Beach that surrounds the canyon behind the high school as well as the canyon behind the development next to City Hall.

City Attorney Munoz reported that Mayor Pro Tem Weinberg recused himself from this item due to a potential conflict of interest and had left the Council Chamber.

City Attorney Munoz stated that Council Member Brough had sent him an email earlier today asking if the Council doesn't have a choice on this matter, why they were even voting. He replied that the City Council does have some choice under Section 51179 to make the map broader than what is required.

Building Official Sutton stated that if the map isn't adopted the City can't require 7A building fortification efforts.

Mayor Anderson felt that exempting properties would not make sense if the neighbors are not doing what they need to do to make their property as fire proof as possible. She asked what would be the purpose of exempting properties.

City Attorney Munoz replied that if the Council were to determine that a whole area was relatively newly built and built to standards that were so high that the City wouldn't have to worry about compliance with the provisions of 51182.

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Council Member Bartlett stated that if the maps aren't adopted, the homeowners could be put in jeopardy of receiving assistance from FEMA in the event of a fire.

Council Member Schoeffel asked for clarification on the statement that if the City failed to comply with a mandatory duty it could possibly jeopardize its exception to tort liability such that if there were a fire that the City could become a defendant in that action and would not be able to rely on general tort immunity.

City Attorney Munoz replied that if the court were to determine that adopting this map is a mandatory duty, then that statement would be correct.

IT WAS MOVED BY COUNCIL MEMBER SCOTT SCHOEFFEL, SECONDED BY COUNCIL MEMBER LISA BARTLETT, HOLD A SECOND READING AND ADOPTION **ORDINANCE 12-06** ENTITLED:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTERS 8.02, 8.03, 8.18 AND ADDING CHAPTER 8.42 OF TITLE 8 OF THE DANA POINT MUNICIPAL CODE ADOPTING VERY HIGH FIRE HAZARD SEVERITY AND EMBER ZONES MAP, MAKING AMENDMENTS THERETO, AND RELATED ACTIONS.

The motion carried by the following vote:

AYES: Council Member Lisa Bartlett, Council Member Scott Schoeffel, and Mayor Lara Anderson

NOES: Council Member William Brough

RECUSE: Mayor Pro Tem Steven Weinberg

12. SUPPORT OF DANA POINT TIMES ADJUDICATION AS A NEWSPAPER OF GENERAL CIRCULATION

This Item was removed from the Consent Calendar by a member of the public.

City Manager Chotkevys provided a staff report.

Mayor Anderson opened the Public Comments.

Norb Garrett, Owner of the Dana Point Times, stated that the newspaper has been reporting on issues in the community for the past four years and that they employ nine (9) people. He added that if the newspaper was approved for adjudication by the Superior Court, they would be able to provide the City another option for legal advertising.

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Dick Dietmeier, Dana Point, stated that he has worked with the Dana Point Times for the last four years. He spoke of their work ethics in getting technical information correct. He felt that if the newspaper's revenue was increased then the paper could employ more reporters.

Mayor Anderson closed the Public Comments.

Council Member Bartlett felt that the Dana Point Times was just a fabulous newspaper and that all of the reporters have been very accurate and fair in all of the reporting.

IT WAS MOVED BY COUNCIL MEMBER LISA BARTLETT, SECONDED BY MAYOR PRO TEM STEVEN WEINBERG, ADOPT RESOLUTION 12-05-01-01 ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, IN SUPPORT OF THE PROPOSED ADJUDICATION OF THE DANA POINT TIMES AS A NEWSPAPER OF GENERAL CIRCULATION BY THE ORANGE COUNTY SUPERIOR COURT.

The motion carried by the following vote:

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

NOES: None

PUBLIC COMMENTS

Joe Snyder, Capistrano Beach, announced that the VFW has a car wash fundraiser scheduled for May 5 at South Shores Church beginning at 9:00 a.m.

Gene Burrus, Dana Point, thanked the City Council for the honor of renaming the Mustang Ball field to the Gene Burrus Ball field.

Nancy Jenkins, Dana Point, invited the Mayor and City Council to look at the pictures in the foyer. She stated that the pictures are being changed out every two (2) months. She recognized the photographers that had provided the photos.

PUBLIC HEARINGS

There were no Public Hearings.

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UNFINISHED BUSINESS

There are no Unfinished Business items.

NEW BUSINESS

13. APPROVE THE DORIS WALKER TRIBUTE ART DESIGN FOR HERITAGE PARK

City Manager Chotkevys provided a staff report.

Director Evans provided details of the tribute decision.

Mayor Anderson stated that she was pleased with the work that the Commission has done and felt that it was a fitting tribute.

Council Member Schoeffel thanked the Commission for addressing this item so quickly.

Council Member Brough asked about the timeframe for completion of the tribute.

Director Evans replied that staff's goal is to have the tribute completed by August 18 which is Doris' birthday.

IT WAS MOVED BY COUNCIL MEMBER SCOTT SCHOEFFEL, SECONDED BY MAYOR PRO TEM STEVEN WEINBERG, APPROVE THE RECOMMENDATION FROM THE DANA POINT ARTS AND CULTURE COMMISSION TO 1) APPROVE THE CONCEPTUAL POPUP-BOOK ART DESIGN SUBMITTED BY LOCAL ARTIST CHRISTOPER PECHARKA FOR PHASE ONE OF THE DORIS WALKER TRIBUTE AT HERITAGE PARK; 2) APPROVE FUNDING FOR THE TRIBUT DISPLAY; AND 3) DESIGNATE THE HERITAGE PARK COMPASS POINT AS THE DORIS WALKER OVERLOOK.

The motion carried by the following vote:

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

NOES: None

PUBLIC COMMENTS

There were no additional Public Comments received.

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STAFF REPORTS

There were no Staff Reports.

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Council Member Bartlett reported that she had attended several Transportation Corridor Agency, Association of California Cities - Orange County and Southern California Association of Governments meetings. She added that on April 26 she had attended the Sheriff's Medal of Valor luncheon. She announced that on May 28 is the annual Memorial Day service in Pines Park at 10:00 a.m.

Council Member Brough reported that he had attended the following:

Chamber Mixer at Luciano's on April 19
Dana Point Historical Society meeting on April 20
Ocean Desalinization Open House at Doheny State Beach on April 26 as well as the Sheriff's Medal of Valor Luncheon

Council Member Schoeffel reported that he had attended two TCA meetings, Sheriff's Medal of Valor Luncheon, and Chaired a Dana Point Destiny meeting. He stated that Friday was the concluding performance of the Dana Point Symphony Orchestra and that Berenika Schmidt would be performing Beethoven's Piano Concerto Number 5.

Mayor Pro Tem Weinberg reported that he had turned in his list of meetings attended to the City Clerk. He stated that the bike race is on May 6 beginning at 7 a.m. He added that he would be announcing the races and that the pro race was scheduled for 4 p.m. He wished a mothers Happy Mother's Day.

Mayor Anderson stated that she had turned in her list of meetings attended to the City Clerk. She announced that the State of the City was scheduled for Thursday at the Marriott. She stated that the San Clemente/Dana Point animal shelter needs foster homes for kittens and that there was a Kitten Shower scheduled for Sunday at 4:00 p.m. at the shelter. She added that if you are interested in fostering to email kanec@san-clemente.org.

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ADJOURNMENT

There being no further business before the City Council at this session, Mayor Anderson adjourned the meeting at 7:10 p.m. She announced that the next Regular Meeting of the City Council will be May 15, 2012, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

Kathy M. Ward

KATHY M. WARD
CITY CLERK

APPROVED AT THE MEETING OF MAY 15, 2012

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Meetings attended since April 17, 2012

Mayor Lara Anderson

April 19 League of Cities OC Division General Membership Meeting
April 25 Friends of Earth/Arnie Gunderson briefing on SONGS
April 26 Medal of Valor Luncheon
April 28 Wag-A-Thon
April 30 AT&T Tim Brown/Jim Hill 9-1-1 Celebrity Golf Classic Morning Welcome Program

Mayor Pro Tem Steven Weinberg

April 19 Vector Control Board of Directors Meeting
Chamber of Commerce Mixer
April 20 Wine Festival reception

Council Member Lisa Bartlett

April 20 California Wine Festival at the Dana Point Yacht Club
April 23-25 Orange County Business Council Advocacy trip to Washington, D.C.

