
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
FEBRUARY 5, 2013**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Weinberg 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 Steven H. Weinberg
Mayor Pro Tem Lisa A. Bartlett
Council Member William P. Brough
Council Member Carlos N. Olvera
Council Member J. Scott Schoeffel
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), (2 cases)
- B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, Government Code § 54956.9 (a), (1 case) Name of Case: Therese Coppi v. City of Dana Point; County of Orange - USDC Central District Case No. - SACV11-1813 JST (RNBx)

Mayor Weinberg 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 Weinberg reconvened the meeting at 6:06 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, Acting Director of Community Development; Brad Fowler, Director of Public Works/Engineering; Christy Teague, Acting City Architect/Planning Manager; Kevin Evans, Director of Community

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Services and Parks; Jackie Littler, Executive Secretary; Dyanne Weamire, Administrative Secretary; and Bobbi Ogan, Deputy City Clerk.

CLOSED SESSION ANNOUNCEMENT

City Attorney Munoz stated that he had no announcement.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by VFW Post 9934 Commander, Joe Snyder.

INVOCATION

The Invocation was provided by OCSD Chaplain Kevin Torrence.

PRESENTATIONS AND PROCLAMATIONS

Business of the Month - Little Kitchen Asian Cafe

Acting City Architect/Planning Manager Teague provided a PowerPoint presentation regarding Little Kitchen Asian Cafe. She reported that the Yang's were originally from China and had immigrated in 1972. She stated that the John Yang opened the cafe July 21, 2011 in Lantern Bay Plaza. She added that they pride themselves on using only fresh ingredients and no MSG. She stated that everything is made from scratch and made to order. Mayor Weinberg presented a Certificate of Recognition to John Yang in honor of The Little Asian Kitchen Cafe being named the Business of the Month for February, 2013. Heather Johnston, Executive Director of the Dana Point Chamber of Commerce presented Mr. Yang a free one year membership to the Dana Point Chamber.

Employee of the Month - Jeremy Kirchner

Director of Disaster Preparedness Rose provided background on Jeremy Kirchner. Mayor Weinberg presented Jeremy with a Certificate of Recognition for being selected Employee of the Month for February, 2013.

Deputy John Gomez, Deputy Mark Northart and CSO Jill Jackson Service Plaques

Lt. Koehmstedt introduced Deputy John Gomez and stated that Deputy Gomez has transferred out to the unincorporated areas after twelve and half years of service here in Dana Point. Mayor Weinberg presented Deputy Gomez with a Certificate of Recognition and a City Tile for his service and dedication to Dana Point. Lt. Koehmstedt reported that Deputy Northart and CSO Jackson were unable to make the meeting tonight.

Deputy of the Year - Mario Saldivar

Lt. Koehmstedt introduced and provided background on Deputy Mario Saldivar. Mario began working in Dana Point in 2010. Lt. Koehmstedt presented Deputy Saldivar with a

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gift from OCSD. Mayor Weinberg presented Deputy Saldivar with a Certificate of Recognition for being selected as the Deputy of the Year.

VFW Post 9934 Deputy of the Year, Firefighter of the Year, Reserve Firefighter of the Year

VFW Post 9934 Commander Joe Snyder presented Deputy Mario Saldivar with a Certificate of Appreciation for being selected VFW Post 9934 Deputy of the Year and Mayor Weinberg presented Deputy Saldivar with a Certificate of Recognition from the City.

VFW Post 9934 Commander Snyder presented a Certificate of Appreciation to Reserve Firefighter Michael Fleck for being selected EMT of the Year and Mayor Weinberg presented Michael Fleck a Certificate of Recognition from the City.

VFW Post 9934 Commander Snyder presented a Certificate of Appreciation to Captain Time Perkins for being selected Firefighter of the Year and Mayor Weinberg presented Captain Perkins with a Certificate of Recognition on behalf of the City for his selection.

CONSENT CALENDAR

IT WAS MOVED BY COUNCIL MEMBER WILLIAM P. BROUGH, SECONDED BY MAYOR PRO TEM LISA A. BARTLETT, TO ACCEPT THE RECOMMENDATIONS FOR ALL ITEMS ON THE CONSENT CALENDAR.

The motion carried by the following vote:

AYES: Council Member William Brough, Council Member Carlos N. Olvera, Council Member Scott Schoeffel, Mayor Pro Tem Lisa Bartlett and Mayor Steven Weinberg

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, JANUARY 15, 2013

APPROVED THE MINUTES.

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3. PLANNING COMMISSION MEETING MINUTES, DECEMBER 10, 2012

RECEIVED AND FILED.

4. PLANNING COMMISSION ACTIONS, MEETING OF JANUARY 28, 2013

RECEIVED AND FILED.

5. ARTS & CULTURE COMMISSION MEETING MINUTES, DECEMBER 19, 2012

RECEIVED AND FILED.

6. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

7. CITY TREASURER'S REPORT, DECEMBER 2012

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF DECEMBER 2012.

8. CLAIMS AND DEMANDS

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

Mayor Weinberg recessed the meeting at 6:55 p.m. and reconvened the meeting at 7:00 p.m.

PUBLIC COMMENTS

Veronica Scala, Dana Point, stated that she supported the Town Center project. She asked the City Council to make Town Center a priority. She felt that if the Town Center project were started now, the completion would coincide with the forecasted improvement in the economy.

Wayne Yost, Dana Point, recommended that the City Council make a field trip to Glendale to see the outdoor mall called the Americana. He felt that it was a perfect example of what the Town Center should be.

Robert Hows, Dana Point, spoke regarding the Town Center. He felt that it was the perfect time for the City to budget and implement the Plan.

Enzo Scognamiglio, Laguna Hills, spoke regarding the Town Center project on behalf of the Dana Point Chamber of Commerce. He stated that the Town Center Plan was vital

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to the future of Dana Point. He felt that starting with improvements of the streets would be a good thing to start now.

John Kalb, Mountain Center, stated that he and his wife were currently trying to open a live theater venue on Del Prado in the next month. He invited the City Council to their introduction on February 28 at Stillwater.

Mike Powers, Dana Point, spoke regarding the Town Center Plan. He stated that he paid a premium for his building in 2006 because of the building location in Town Center. He added that in 2007 he had signed an encroachment agreement with the City to provide fiber optics to the businesses in the Town Center.

Karin Schnell, Dana Point, spoke regarding the art exhibitions that are being displayed in the Council Chamber foyer and at the Community Center. She stated that the deadline for submittal for the next exhibition is February 15 and that information is provided on the City's website, www.danapoint.org. She added that the current exhibition at the Community Center is the entrees to the Festival of Whales logo contest. She announced that the opening concert of the Dana Point Symphony is this Friday at 7:30 p.m.

PUBLIC HEARINGS

There were no Public Hearings.

UNFINISHED BUSINESS

9. SHORT TERM RENTALS

City Manager Chotkevys provided a staff report and introduced Assistant City Manager Killebrew who provided an overview of the item.

City Attorney Munoz stated that if Council would like to move forward, in order to allow vacation rentals to occur, a Zone Text Amendment (ZTA) would need to be approved for the areas in which the Council would like to allow the use to occur. He added that any zoning changes in the coastal zone would have to go to the Coastal Commission for approval of a Local Coastal Program Amendment (LCPA). He stated that the LCPA approval is a lengthy process and typically takes about 18 months. He added that Business Regulations allow the City Council more flexibility to change the rules rather than making a change to a ZTA or LCPA. He stated that it makes more sense to have general business guidelines that everyone would have to follow as opposed to requiring a Conditional Use Permit. He added that Council would first adopt the Business Regulations that goes through Council only, then process a ZTA and LCPA which goes to the Planning Commission, then the City Council and the Coastal Commission. He stated that Business Regulations and zoning rules in non-

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coastal areas could take effect quickly but the areas that are in the coastal zone would take some time. He added that staff has proposed that by January 15, 2014 everyone who is currently operating a vacation rental would have to come into compliance with the Business Regulations. He stated that for those vacation rentals in the coastal zone, the City would allow them to continue to operate but if the use was not approved by the Coastal Commission, they would not be allowed to continue.

Commissioner Schoeffel asked of the 256 vacation rentals identified how many are located within the coastal zone.

Assistant City Manager Killebrew replied that he had not counted them, but felt that a vast majority of them were in the coastal zone.

Mayor Weinberg opened the public comments.

Gary Clark, Capistrano Beach, felt that it was obvious that vacation rentals were going to be allowed. He stated that he has two vacation rentals operating on his street currently. He added that there were no regulations as to how many units would be allowed per block or how many units period. He stated that he has been in contact with the Department of Justice and that the initial feeling was that these rentals fall within the American Disabilities Act (ADA).

Charlie Hoose, Capistrano Beach, stated that he opposes staff's position that they can regulate this use in residential neighborhoods and that he does not agree with the Planning Commission's approval in 2009. He added that his family has lived next door to a vacation rental for the last 10 years and from their experience there is a high risk for total non-compliance and no remedy. He stated that it is a constant issue for their security personnel on Beach Road. He felt that the plan places the desires of the City and new source of revenue in front of the needs and desires of the residents. He stated that their quality of life will be impacted.

Steve High, Newport Beach, stated that he is experienced with living near vacation rentals on Balboa Island. He felt that the City Council's job was easy because there was a Code in place that prohibits vacation rentals. He stated that for three months out of the year, Balboa Peninsula changes and that the City of Newport does as good of a job as they can, but it is too difficult to monitor the rentals. He added that from a real estate perspective he sees nothing but the de-valuing vacation rentals do to a neighborhood and that no one has an interest in living next to a vacation rental. He encouraged the City Council to enforce the current Code.

Hugh Limebrook, Capistrano Beach, stated that they have been renting out their home on Beach Road for the past several summers and have not had any problems. He added that Beach Road should not be a target as they have their

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own guarded gate, twenty-four security services, an elected Board, trash service, designated parking and overflow parking. He felt that the Coastal Commission would want people to enjoy the beach and this may prohibit that use.

Bill Shepherd, Dana Point, stated that he has been on both sides of this issue. He suggested that there be a provision that when the property owner applies for their permit that they need to provide their tax identification number to ensure that they are paying their taxes. He felt that this was a growing industry and that the City Council needs to identify how many rentals they are going to allow in the residential areas.

Mayor closed public comments.

Council Member Brough asked if it was the plan that the older properties would have to be brought up to current building codes.

Assistant City Manager Killebrew replied that the intent was to check the layout to ensure the number of guests and parking requirements were met.

City Manager Chotkevys clarified that if staff does see anything illegal that creates an unsafe condition, the City would take action.

Council Member Brough felt that this was creating a huge new bureaucracy. He stated that there is no remedy in these regulations beyond calling the Police or Code Enforcement. He suggested that instead of creating all of these rules, the City should just go after the bad apples.

City Manager Chotkevys replied that this program would allow the City an effective way of dealing with those rentals.

Council Member Brough stated that he would like the City to create something that helps to go after the bad apples and felt that heavy fines were needed.

Council Member Olvera felt that there should already be Ordinances that address some of the issues. He stated that there are rules in place to control the irresponsible homeowners. He added that he would like to change the Code to be consistent with the direction Council decides to take. He stated that he would support allowing vacation rentals. He felt that the Business Regulations were over-handed and read like a Conditional Use Permit. He stated that the owners should be made to pre-register with the City with their tax identification number.

Council Member Schoeffel spoke regarding the Revenue Code and asked if the reason for collecting Transient Occupancy Taxes was to defray the costs related to transient occupancy.

City Attorney Munoz replied yes.

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Council Member Schoeffel stated that unless the City changes the Revenue Code, if the Council decides to allow the use of short term rentals in any part of the City, the Revenue Code would require the collection of an occupancy tax.

City Manager Chotkevys clarified that because it was an Ordinance, it is not policy it is a law.

Council Member Schoeffel asked that if the City were to forego the collection of TOT, would the Council have to specifically amend the Revenue Code.

City Attorney Munoz replied that staff's view is this: unless the Council directs otherwise, if Council changes the zoning to permit vacation rentals and the City starts issuing permits and going forward with the Business Regulations, as soon as a rental has been permitted, staff intends to begin to collect TOT. He stated that the current proposal is to wait until January 2014 before collecting.

Council Member Schoeffel stated that the City would not collect if the Revenue Code was amended.

City Attorney Munoz replied that staff would need that Code revised in order to not have to collect.

Council Member Schoeffel asked if it would be possible to amend the Revenue Code and treat these uses differently than other short term transient uses in the City.

City Attorney Munoz replied that he would have to research whether that was possible.

Mayor Pro Tem Bartlett asked if Council allows short term rentals, would the rentals need to be compliant with the ADA.

City Attorney Munoz replied that he had not researched that issue. He stated that he was comfortable in saying that the City would not have any legal responsibilities with respect to that, and that the owners may or may not have to comply.

Mayor Pro Tem Bartlett stated that she has visited a lot of the cities that allow short term rentals and she has seen that the rentals were not ADA compliant.

City Attorney Munoz replied that the City would not have any legal liability for failing to enforce ADA.

Mayor Pro Tem Bartlett asked if the City would be violating law by allowing the vacation rentals.

City Attorney Munoz replied that with respect to the ADA, the City would not be liable, but that the owners of the units might have responsibility.

Mayor Weinberg asked what the occupancy limit was for homes.

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Acting Director of Community Development Tilton replied that it was consistent with what is proposed in the draft Ordinance.

Acting City Architect/Planning Manager Teague according to the Building Official; one room must be 120 square feet minimum. She added that the Code allows for one person per 150 square feet, excluding the kitchen and bathrooms.

Mayor Weinberg stated that what is being proposed for a vacation rental is about 20 percent the maximum occupancy that the building is allowed. He added that other long-term rentals are allowed to have more people in the home compared to the rules for vacation rentals.

Council Member Schoeffel stated that this is a use in a residential zone with a high risk of noncompliance. He added that he was not convinced that the problems can't be mitigated. He felt that the draft Ordinance does not offer a remedy for noncompliance and that this was an opportunity to at least try to put together a regulatory scheme to remedy any issues. He stated that the City cannot permit the use without collecting TOT under our Revenue Code.

Mayor Pro Tem Bartlett felt that the draft Ordinance was not strong enough to enforce the regulations and felt that there needs to be stronger penalties before she would feel comfortable moving forward with this.

Council Member Brough stated that he would also like to see the specific steps regarding the inspection process. He added that he would like stronger language to allow the City to crack down on the bad apples as well as a better record keeping process for the complaints. He suggested a three strikes rule, high fines, and a fee structure also.

Mayor Pro Tem Bartlett felt that staff needs to define in the proposed Ordinance specific details regarding what constitutes a bedroom and a sleeper sofa in order to keep violators at a minimum.

Council Member Schoeffel suggested that the Council consider a limitation per geographic area, or number of transactions per year. He felt that a cap on the number of uses would be helpful as well as periodic monitoring of the program.

Mayor Weinberg stated that the draft Ordinance needs to include inspection guidelines limited to safety features, and evacuation plans. He added that he was in favor of a permit with a nominal fee. He stated that the City needs to make sure the homeowners associations sign off or approve and that the City needs to have spot check monitoring,

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Council Member Olvera stated that he would not support TOT collection, or a permit requirement, but felt there should be a registry.

City Attorney Munoz asked for direction on the zoning issue and felt that it would be helpful to staff to know if there were specific zoning districts that the Council would like to allow vacation rentals in.

City Manager Chotkevys stated that staff has received good direction, but felt that it would help staff expedite the Council's review of the draft Ordinance if the Mayor and another Council Member could assist staff as a resource.

Council Member Brough felt that a map would be helpful to show where the coastal zones are located and where the existing units are located.

IT WAS MOVED BY COUNCIL MEMBER J. SCOTT SCHOEFFEL, SECONDED BY MAYOR PRO TEM LISA A. BARTLETT, DIRECT STAFF TO RETURN TO COUNCIL WITH A DRAFT ORDINANCE THAT IS CONSISTENT WITH THE COMMENTS AND SUGGESTIONS MADE BY THE CITY COUNCIL AND THE PUBLIC SPEAKERS.

The motion carried by the following vote:

AYES: Council Member William Brough, Council Member Carlos N. Olvera, Council Member Scott Schoeffel, Mayor Pro Tem Lisa Bartlett and Mayor Steven Weinberg

NOES: None

NEW BUSINESS

There were no New Business items.

PUBLIC COMMENTS

There were no additional Public Comments received.

STAFF REPORTS

City Manager Chotkevys reported that a week ago he had met with Sheriff Sandra Hutchens. He stated that she is a true inspiration, her prognosis is good and he expects a full and complete recovery from cancer.

City Attorney Munoz reported that this morning California Supreme Court had oral arguments in San Francisco about the question of whether a City could ban medical marijuana dispensaries using their Zoning Code. He felt that based on the tenor of

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questions, that it was more likely than not that their answer is going to be that a City can do that. He stated that a ruling should come out within the next 90 days.

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Council Member Olvera reported that he had attended the League of California Cities conference for new Council Members as well as the Chamber Installation dinner. He encouraged those who would like to read, to sign up for a reading of *Two Years Before the Mast* by Richard Henry Dana as part of the Festival of Whales activities. He stated that register to read, email twoyearsbeforethemastdp@gmail.com.

Council Member Schoeffel reported that he attended the following: two TCA meetings, the Chamber reception for Congressman Darrell Issa, quarterly CASA meeting held at the shelter, the OC Business Council annual dinner on January 31 and he helped open the first Running of the Dogs at Salt Creek Park this past Saturday. He stated that this event was held by Guide Dogs for the Blind. He reported that the Dana Point Symphony Orchestra will be kicking off the 2013 season this Friday night beginning at 7:30 p.m.

Council Member Brough reported that he had attended the following:

January 18 - Civic Association Coffee Chat

January 23 - Ribbon cutting for new business OC One Love and the Historical Society annual meeting

January 29 - Chamber Luncheon for Congressman Darrell Issa

January 31 - Chamber Installation dinner

Mayor Pro Tem Bartlett reported that she had attended several Transportation Corridor Agency meetings, Association of California Cities - Orange County, and a meeting of the Ocean Institute Board of Directors. She stated that she had also attended the OC Business Council dinner and the Chamber lunch for Congressman Darrell Issa. She announced that February 24 through March 2 is Restaurant Week and that several restaurants in Dana Point would be participating with fantastic specials. She stated that the Festival of Whales was coming up starting March 2. She added that March 30 are the egg hunts. She encouraged everyone to look at news guide for upcoming events for spring.

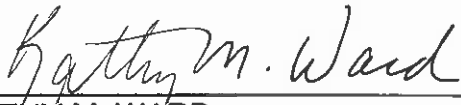
Mayor Weinberg stated that he had turned in his list of meetings attended to the City Clerk. He added that he had spent time with Congressman Darrell Issa walking Town Center. He stated that he had attended the Chamber Installation dinner and had the honor of swearing in the new Board.

Council Member Olvera stated that he appreciated the comments from the public speakers on the Town Center.

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ADJOURNMENT

There being no further business before the City Council at this session, Mayor Weinberg declared the meeting adjourned at 8:46 p.m. and announced that the next Regular Meeting of the City Council will be held on February 19, 2013, 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 FEBRUARY 19, 2013

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Meetings attended since January 19, 2013:

Mayor Steven Weinberg

January 16	Meeting with Steven/Jack Snook/Dave Austin from Emergency Services Consulting International Re: OCFA Standards of Cover Action Plan
January 17	Vector Control Budget and Finance Committee Meeting Vector Control Board of Directors Meeting
January 22	OWQ Meeting
January 23	Ribbon Cutting for OC One Love
January 24	OCFA Executive Committee Meeting OCFA Board of Directors Meeting
January 28	Meeting with Peggy Tabas ref. Majestic Properties.
January 29	Breakfast with So. County Mayor with Darrell Issa Meeting with Darrell Issa concerning Town Center Joint Chamber luncheon with Darrell Issa
January 31	Dana Point Chamber Installation Dinner.

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