
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
FEBRUARY 2, 2016**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Tomlinson at 5:01 p.m. in the City Council Chambers, 33282 Golden Lantern, Dana Point.

ROLL CALL OF CITY COUNCIL MEMBERS:

Present: Mayor John A. Tomlinson
Mayor Pro Tem Richard A. Viczorek
Council Member Joseph L. Muller
Council Member Carlos N. Olvera
Council Member J. Scott Schoeffel (*Arrived at 5:05 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 (d1), (1 case)
- B. CONFERENCE WITH LEGAL COUNSEL INITIATION OF LITIGATION, Government Code § 54956.9 (c), 1 case: Appointment of Receiver for 33895 Alcazar Diana Patterson
- C. CONFERENCE WITH LEGAL COUNSEL EXISTING LITIGATION, Government Code § 54956.9 (a), (2 cases) Name of Case: City of Dana Point v. California Coastal Commission, et al Case No. 37-2010-00099827 Name of Case: Pickering Properties LLC v. City of Dana Point, Case No. 00082754CJC

Mayor Tomlinson recessed the meeting into a Closed Session at 5:03 p.m. pursuant to Government Code Section 54956 et seq.

RECONVENE CITY COUNCIL MEETING - CALL TO ORDER

Mayor Tomlinson reconvened the meeting at 6:19 p.m. All Council Members were present.

STAFF PRESENT: Douglas C. Chotkevys, City Manager; Patrick Munoz, City Attorney; Kathy Ward, City Clerk; Mike Rose, Director of Disaster Preparedness; Lt. Russ Chilton;

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Ursula Luna-Reynosa, Director of Community Development; Brad Fowler, Director of Public Works and Engineering; Mark Sutton, Building Official; Kevin Evans, Director of Community Services and Parks; John Tilton, City Architect; Evan Langan, Associate Planner; Jackie Littler, Executive Assistant; and Bobbi Ogan, Deputy City Clerk.

CLOSED SESSION ANNOUNCEMENT

City Attorney Munoz stated that with regard to Item B of Closed Session Initiation of Litigation, that the City Council on a unanimous vote had authorized his office to file a motion of receivership.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Pro Tem Viczorek.

INVOCATION

The Invocation was provided by Associate Pastor Jens Christy of Capo Beach Church.

PRESENTATIONS AND PROCLAMATIONS

There were no Presentations nor Proclamations.

CONSENT CALENDAR

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY COUNCIL MEMBER J. SCOTT SCHOEFFEL, THAT THE CITY COUNCIL ACCEPT THE RECOMMENDATIONS FOR ALL ITEMS ON THE CONSENT CALENDAR.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member J. Scott Schoeffel, Council Member Carlos N. Olvera, Mayor Pro Tem Richard A. Viczorek and Mayor John A. Tomlinson

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.

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2. REGULAR MEETING MINUTES, JANUARY 19, 2016

APPROVED THE MINUTES.

**3. PLANNING COMMISSION MEETING MINUTES, JANUARY 11, 2016
RECEIVED AND FILED.**

RECEIVED AND FILED.

4. PLANNING COMMISSION ACTIONS, MEETING OF JANUARY 25, 2016

RECEIVED AND FILED.

5. YOUTH BOARD MEETING MINUTES, DECEMBER 17, 2015

RECEIVED AND FILED.

6. ARTS AND CULTURE COMMISSION MEETING MINUTES, JULY 15, 2015

RECEIVED AND FILED.

**7. ARTS AND CULTURE COMMISSION MEETING MINUTES, OCTOBER 14,
2015**

RECEIVED AND FILED.

8. HOMELESS TASK FORCE MEETING MINUTES, OCTOBER 20, 2015

RECEIVED AND FILED.

9. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

10. CITY TREASURER'S REPORT, DECEMBER 2015

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH
OF DECEMBER, 2015.

11. CLAIMS AND DEMANDS

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

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12. SECOND READING AND ADOPTION OF WATER EFFICIENT LANDSCAPE ORDINANCE - ZONE TEXT AMENDMENT ZTA15-0002

HELD A SECOND READING AND ADOPT **ORDINANCE 16-02** ENTITLED:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA15-0002, AMENDING THE CITY OF DANA POINT ZONING ORDINANCE, CHAPTER 9.55 FOR THE PURPOSE OF UPDATING THE WATER EFFICIENT LANDSCAPE STANDARDS OF THE CITY TO INCLUDE LOCAL WATER EFFICIENT LANDSCAPE PROVISIONS IN ACCORDANCE WITH STATE OF CALIFORNIA EXECUTIVE ORDER (B-19-15).

13. 2016 WEED ABATEMENT PROGRAM

ADOPTED **RESOLUTION 16-02-02-01** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DECLARING WEEDS A PUBLIC NUISANCE AND INITIATING ABATEMENT PROCESS.

PUBLIC COMMENTS

Donna Barnhorn, Past Chair for Relay for Life, presented an award to the City for their support of last year's Relay for Life.

Dana Yarger, Dana Point, reported that he was a consultant for a sculpture project that is dedicated to the icons of California and is sponsored by the California Milk Processor's Board. He stated that the sculptures were cows and that his task was to find venues to display the art. He added that the project was complete and funded. He stated that when the sculptures were sold, they would benefit Camp Ronald McDonald. He asked for permission to talk with staff if the City Council was interested in this project.

Sandie Iverson, Capistrano Beach, spoke regarding the City of Dana Point's history not being preserved.

Wayne Via, Dana Point, spoke regarding short term rentals and the trouble that they have been experiencing in his neighborhood. He suggested that staff post on the website a list of permitted short term rentals in the city.

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PUBLIC HEARINGS

14. APPEAL OF PLANNING COMMISSION DENIAL OF VARIANCE V15-0004 FOR CREATION OF A FOURTH-STORY BY ALLOWING CONVERSION OF CRAWL SPACE TO HABITABLE FLOOR-AREA AT A CURRENTLY THREE-STORY DUPLEX LOCATED AT 33895 CALLE LA PRIMAVERA

City Manager Chotkevys introduced the item and stated that the appellant has asked for this item to be continued to March 1st. He recommended that the City Council open the public hearing and continue the item.

Mayor Tomlinson opened the Public Hearing.

IT WAS MOVED BY COUNCIL MEMBER J. SCOTT SCHOEFFEL, SECONDED BY COUNCIL MEMBER CARLOS N. OLVERA, THAT THE CITY COUNCIL OPEN THE PUBLIC HEARING AND CONTINUE THE ITEM TO THE REGULAR CITY COUNCIL MEETING OF MARCH 1.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member J. Scott Schoeffel, Council Member Carlos N. Olvera, Mayor Pro Tem Richard A. Viczorek and Mayor John A. Tomlinson

NOES: None

UNFINISHED BUSINESS

15. APPOINTMENT OF CITY COUNCIL MEMBERS TO DOHENY VILLAGE FORM BASED CODE REVIEW COMMITTEE

City Manager Chotkevys introduced the item and Director of Community Development Luna-Reynosa provided a staff report.

Mayor Pro Tem Viczorek felt that the members should be from throughout the City, not just from Capistrano Beach. He made the recommendation that Council Member Muller be appointed.

Council Member Olvera suggested that Mayor Tomlinson also serve on the committee.

Council Member Muller felt that Mayor Pro Tem Viczorek would be a good addition to the committee because he works in that area.

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Mayor Pro Tem Viczorek replied that he was willing to serve.

Council Member Schoeffel felt that serving on this committee was a great opportunity to help transform one of the neediest parts of town.

Council Member Muller stated that he was interested in serving but felt that the others would be better suited to serve on the committee. He added that if the Council would like for him to serve, then he would.

IT WAS MOVED BY MAYOR PRO TEM RICHARD A. VICZOREK, SECONDED BY COUNCIL MEMBER J. SCOTT SCHOEFFEL, THAT THE CITY COUNCIL APPOINT MAYOR TOMLINSON AND COUNCIL MEMBER MULLER TO SERVE ON THE DOHENY VILLAGE FORM BASED CODE COMMITTEE; AUTHORIZE THE COUNCIL MEMBERS TO APPOINT RESIDENTS AT LARGE AND AUTHORIZE STAFF TO SELECT THE ARCHITECT AND DEVELOPER COMMITTEE MEMBERS.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member J. Scott Schoeffel, Council Member Carlos N. Olvera, Mayor Pro Tem Richard A. Viczorek and Mayor John A. Tomlinson

NOES: None

City Manager Chotkevys asked for clarification of the motion; that as part of the motion that staff would be authorized to select the Architect and Developer Committee Members.

Mayor Pro Tem Viczorek replied that was correct.

16. PROPOSED CITY COUNCIL SPONSORED INITIATIVE RE: TOWN CENTER

City Manager Chotkevys introduced the item and City Attorney Munoz provided a staff report.

Mayor Pro Tem Viczorek felt that this item accomplishes what the Council directed at the last meeting. He asked for clarification on if it was a conflict with the other initiative, would it need a paragraph included indicating that conflict.

City Attorney Munoz replied that under the law if you have two competing ballot measures, if they both are adopted the one that receives the most votes is operative. He added that if the second one receives the majority of the votes and there is nothing that is in direct conflict with the first one then it is also operative. He stated that to avoid confusion as much as possible on that issue that the Ordinance was drafted to include the

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language about the direct conflict. He added that when the document was drafted, staff addressed the differences of the initiative in the text of the Council's proposed ballot measure.

Council Member Schoeffel stated that as he read it and understood it that the initiative being proposed by the Council was to affirm existing law so a yes vote would be a ratification by the electorate.

City Attorney Munoz replied that this was an Ordinance that was providing the opportunity for voters to implement what is currently the law.

Council Member Schoeffel asked if a no was to prevail on the City Council's initiative and a no was to prevail on the qualified citizen's initiative, would no mean a rescission of the Town Center's zoning and the parking.

City Attorney Munoz replied that it would not.

Mayor Tomlinson opened the public comments.

Connie Hazel, Dana Point, stated that she was concerned with parking meters and toilets being installed on Santa Clara.

City Manager Chotkevys asked Director of Public Works and Engineering Fowler to read from a staff report that was presented last July regarding parking in the area.

Ben Mall, Dana Point, spoke about the lack of street lights on Santa Clara. He felt that the residential area was turning into a commercial area and that parking should be kept between Del Prado and Pacific Coast Highway.

Tracey Williams, Dana Point, stated that the biggest issue was the lack of a parking plan and felt that reducing the parking requirements did not make sense.

Carol Kelly, Dana Point, stated that she was concerned with the lack of public parking lots.

Paul Wyatt, Dana Point, spoke regarding parking in the Town Center.

Cortland Ray, Dana Point, stated that the title of the measure needed to be distinguished from the people's initiative. He felt that allowing rebuttal would provide more information to the voters and if rebuttals were not allowed that it would look like the City was trying to hide something. He asked if any consideration has been made to turn the area into a parking benefit district.

Gail Benda, Dana Point, urged the Council to not adopt this item and felt that having a competing initiative was a waste of tax payer money.

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Betty Hill, Capistrano Beach, felt that there was no reason to go through with a competing initiative as it would only serve to confuse the voters.

Buck Hill, Capistrano Beach, felt that the initiative was only to confuse the voters. He spoke of the CEQA analysis and stated that the existing public parking was declining rapidly.

Sandie Iverson, Capistrano Beach, felt that the City Council initiative was only confusing the public and that it was a waste of time and money.

Cindy Fleming, Dana Point, spoke regarding the existing parking problem in the Town Center.

Harold Kaufman, Dana Point, spoke regarding the City Council proposed ballot initiative. He felt that a preferred parking district would help the residents to keep commercial parking out of the residential area.

Debra Lewis, Dana Point, stated that angry people vote and felt that the City Council was confusing the public with their proposed measure. She suggested that the Council just let the people vote the initiative up or down.

Cindy Lance, Dana Point, stated that she was opposed to adding an initiative to the ballot.

Gary Newkirk, Dana Point, stated that if the City Council measure has no purpose the public would see it as a smoke screen.

Tom Gates, Dana Point, stated that without adequate parking, the Town Center will fail to live up to the hype. He added that he did not support a competing ballot measure.

Mayor Tomlinson closed the public comments.

Council Member Muller stated that the ballot measure would not be out there to confuse the voters and agreed that the title should be changed. He added that just because he does not agree with the speakers, does not mean he does not hear them.

Council Member Olvera asked what the current status was for a parking plan for the Lantern District.

Director Luna-Reynosa replied that the action taken by the Council in September for parking management policies and standards has been provided to the Coastal Commission. She stated that the Commission has extended their time to schedule the LCPA hearing after the results of the election in June.

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Mayor Pro Tem Viczorek stated that he does hear the public and added that the intent of this ballot measure was to clear up the confusion. He stated that the Council has been told that people were confused. He felt that the plans needed to be side-by-side so the voters could choose.

Council Member Schoeffel stated that he does not support a competing ballot measure.

Mayor Tomlinson stated that he did not want this ballot measure to be a smoke screen that he wanted to get the information out to the voters.

Council Member Muller felt that the City Council owed it to the electorate to have the plans side-by-side. He stated that this was not a smoke screen and that it would create a better informed voter.

Mayor Tomlinson asked for clarification on the parking issue.

City Manager Chotkevys replied that no one has lost the right to go before the Coastal Commission and voice their opinion before a public hearing and that all of the remedies have not been exhausted.

Director Luna-Reynosa clarified that the initiative further ratifies the law that was previously approved. She stated that in the parking management plan is one of the tools to help prevent overflow commercial parking into residential districts.

Mayor Tomlinson asked about the parking code sections that had been referred to and what affect do they have on this initiative.

City Attorney Munoz replied that the parking plan that the Council previously voted on includes the formation of a parking benefit district. He stated that in order to form a parking benefit district there has to be a vote of the people who are impacted.

Council Member Muller asked what the process would be to change the title of the ballot measure.

City Attorney Munoz replied that a motion would need to be made to change the title. He suggested that the Council vote on whether they want to call the election, and if it passes, then a discussion on the title would be appropriate.

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY MAYOR PRO TEM RICHARD A. VICZOREK, THAT THE CITY COUNCIL ADOPT **RESOLUTION 16-02-02-02** BY WHICH THE COUNCIL WOULD SUBMIT A CITY COUNCIL SPONSORED INITIATIVE ORDINANCE TO THE VOTERS FOR A SPECIAL ELECTION TO BE CONSOLIDATED WITH THE JUNE 7, 2016 REGULAR ELECTION, ENTITLED:

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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ORDERING, CALLING, PROVIDING FOR AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE JUNE 7, 2016 REGULAR ELECTION, FOR THE SUBMISSION TO THE VOTERS OF A QUESTION RELATING TO THE TOWN CENTER PLAN.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Mayor Pro Tem Richard A. Viczorek, and Mayor John A. Tomlinson

NOES: Council Member Carlos N. Olvera, and Council Member J. Scott Schoeffel

The City Council and staff discussed the title of the ballot measure.

IT WAS MOVED BY MAYOR PRO TEM RICHARD A. VICZOREK, SECONDED BY COUNCIL MEMBER JOSEPH L. MULLER, THAT THE CITY COUNCIL AUTHORIZE STAFF TO CHANGE THE TITLE OF THE BALLOT MEASURE TO TOWN CENTER AND PUBLIC PARKING IMPROVEMENT MEASURE.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member Carlos N. Olvera, Mayor Pro Tem Richard A. Viczorek and Mayor John A. Tomlinson

NOES: Council Member J. Scott Schoeffel

IT WAS MOVED BY MAYOR PRO TEM RICHARD A. VICZOREK, SECONDED BY COUNCIL MEMBER JOSEPH L. MULLER, THAT THE CITY COUNCIL ADOPT A MOTION DIRECTING THE CITY ATTORNEY TO PREPARE AN IMPARTIAL ANALYSIS; AND ADOPT A MOTION CALLING FOR THE CITY COUNCIL TO SUBMIT AN ARGUMENT IN FAVOR OF THE TOWN CENTER AND PUBLIC PARKING IMPROVEMENT MEASURE, AND GIVING RELATED DIRECTION TO STAFF REGARDING HOW TO PROCEED.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member Carlos N. Olvera, Mayor Pro Tem Richard A. Viczorek and Mayor John A. Tomlinson

NOES: Council Member J. Scott Schoeffel

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY MAYOR PRO TEM RICHARD A. VICZOREK, THAT THE CITY COUNCIL ADOPT A MOTION BY WHICH TO APPROPRIATE \$8,500 FROM GENERAL FUND UNASSIGNED RESERVE TO THE CITY CLERK PROFESSIONAL SERVICES ACCOUNT (31-2230) FOR ELECTION SERVICES.

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The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member Carlos N. Olvera,
Mayor Pro Tem Richard A. Viczorek and Mayor John A. Tomlinson

NOES: Council Member J. Scott Schoeffel

NEW BUSINESS

There were no New Business items.

PUBLIC COMMENTS

There were no additional Public Comments received.

STAFF REPORTS

City Manager Chotkevys thanked David Whiting of the Orange County Register for his recent article on Dana Point and other cities.

City Attorney Munoz reminded the City Council and the public that the Council could not provide responses to comments raised in Public Comments or on items that were not on the agenda. He stated that there was a situation in the County of Marin where staff provided a presentation on housing and an engaged discussion occurred afterwards between the Board of Supervisors and staff. He added that there was litigation over that and that the court found the Board of Supervisors in violation of the Brown Act.

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Council Member Olvera stated that he would turn in his list of meetings to the City Clerk.

Council Member Schoeffel stated that he loved the idea proposed by Dana Yarger in Public Comments and urged the City Manager to speak to Mr. Yarger and possibly involve the Arts and Culture Commission.

Council Member Muller stated that he too supports the cow exhibit and the comments made by Council Member Schoeffel. He added that he had turned in his list of meetings to the City Clerk.

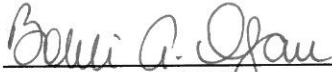
Mayor Pro Tem Viczorek stated that he would turn in his list of meetings attended to the City Clerk.

Mayor Tomlinson stated that it was a great article of Dana Point and urged others to read it.

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ADJOURNMENT

There being no further business before the City Council at this session, Mayor Tomlinson adjourned the meeting at 8:24 p.m. and announced that the next Regular Meeting of the City Council will be February 16, 2016, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.



**BOBBI A. OGAN
DEPUTY CITY CLERK**

APPROVED AT THE MEETING OF FEBRUARY 16, 2016

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Meetings attended since January 19, 2016:

Mayor Pro Tem Richard A. Viczorek

January 20 - SCAG RTP/SCS Elected Official Briefing – OCTA
January 21 - SOCAM Meeting – Irvine
January 28 - Dana Point Chamber of Commerce Installation Dinner – St. Regis

Council Member Joseph L. Muller

January 20 - SCAG Elected Officials Briefing
January 21 - League of Cities
January 28 - Meeting with Mark Vargus
OCFA Board Meeting
January 29 - Meeting with DC Abel and City Manager
February 1 - OCFA Special Meeting

Council Member Carlos N. Olvera

January 21 - Vector Control Meeting
Festival of Whales Meeting
January 28 - Dana Point Chamber of Commerce Installation Dinner – St. Regis
January 29 - Ribbon Cutting for Luna Grill