

# CITY OF DANA POINT

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## CITY COUNCIL REGULAR MEETING



TUESDAY  
SEPTEMBER 6, 2016  
5:00 P.M.

## MINUTES

Location: Community Center Gymnasium, 34052 Del Obispo, Dana Point, California 92629

### TELECONFERENCE

Courtyard by Marriott at Foggy Bottom, 515 20<sup>th</sup> Street, NW, Washington, DC, Room 500, 20006

Next City Council Ordinance No. 16-05

## 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 5:13 p.m. in the City Council Chambers, 33282 Golden Lantern, Dana Point.

## ROLL CALL OF CITY COUNCIL MEMBERS:

John A. Tomlinson, Mayor  
Richard A. Viczorek, Mayor Pro Tem (*Joined the meeting via Teleconference at 5:16 p.m.*)  
Joseph L. Muller, Council Member  
Carlos N. Olvera, Council Member  
J. Scott Schoeffel, Council Member

## CLOSED SESSION

City Attorney Munoz indicated that there was a need for Closed Session discussion and stated that there was also a need to add one additional item under Anticipated Litigation Government Code § 54956.9 (d1).

IT WAS MOVED BY COUNCIL MEMBER OLVERA, SECONDED BY COUNCIL MEMBER MULLER, THAT THE CITY COUNCIL ADD AN ADDITIONAL ANTICIPATED LITIGATION ITEM TO THE CLOSED SESSION DISCUSSION.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member J. Scott Schoeffel, Council Member Carlos N. Olvera, and Mayor John A. Tomlinson  
NOES: None  
ABSENT: Mayor Pro Tem Richard A. Viczorek

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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), (2 cases)
- B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION, Government Code § 54956.9 (a), (1 case)

Name of Case: City of Dana Point v. Headlands Reserve LLC, Sanford Edward, et al  
(Orange County Superior Court Case No. 30-2016-00872051)

Mayor Tomlinson recessed the meeting into a Closed Session at 5:15 p.m. pursuant to Government Code Section 54956 et seq.

## **RECONVENE CITY COUNCIL MEETING – CALL TO ORDER**

Mayor Tomlinson reconvened the meeting at 6:08 p.m. All Council Members were present.

STAFF PRESENT: Douglas C. Chotkevys, City Manager; Patrick Munoz, City Attorney; Mike Killebrew, Assistant City Manager; Kathy Ward, City Clerk; Mike Rose, Director of Disaster Preparedness; Lt. Russ Chilton; Ursula Luna-Reynosa, Director of Community Development; Brad Fowler, Director of Public Works and Engineering; Matthew Schneider, Planning Manager; Sean Nicholas, Senior Planner; Brian McClure, Interim Director of Community Services and Parks; Mark Sutton, Building Official; Ted Harris, Code Enforcement Officer; DyAnne Weamire, Senior Administrative Assistant, and Bobbi Ogan, Deputy City Clerk.

## **CLOSED SESSION ANNOUNCEMENT**

City Attorney Munoz stated that he had nothing to report.

## **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Council Member Muller.

## **INVOCATION**

There was no Invocation.

## **PRESENTATIONS AND PROCLAMATIONS**

There were no Presentations or Proclamations

## **CONSENT CALENDAR**

A member of the Public removed Item 5 from the Consent Calendar.

IT WAS MOVED BY COUNCIL MEMBER OLVERA, SECONDED BY COUNCIL MEMBER MULLER, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM 5.

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  
ABSENT: 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, AUGUST 16, 2016**

APPROVED THE MINUTES.

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

RECEIVED AND FILED.

**4. CLAIMS AND DEMANDS**

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

**5. SECOND READING FOR ZONE TEXT AMENDMENT ZTA16-0001, TO AMEND THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN (HDGP), TO ADDRESS PUBLIC ACCESS OVER SPECIFIED ACCESS WAYS IN THE RESIDENTIAL PORTION OF THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN AND THE USE OF THREE RETRACTABLE GATES**

A member of the Public removed this item from the Consent Calendar.

City Manager Chotkevys provided an introduction and Director Luna-Reynosa provided a staff report.

Mayor Tomlinson opened the Public Comments.

Buck Hill, Capistrano Beach, questioned who was responsible for paying for the gates and maintenance.

Tristan Krogus, Dana Point, spoke regarding the City's suit against the Headlands Reserve.

Gary Hanson, Dana Point, asked the Council to reach out to Sanford Edward and try to avoid litigation.

Kirk Lapple, Dana Point, spoke regarding the litigation between the City and Headlands Reserve.

Mayor Tomlinson closed the Public Comments.

Council Member Schoeffel stated that as he understands it, the Council is being asked to approve this item and send it to the Coastal Commission. He added that the financial responsibility of the gates would be an issue for the future dependent on the Coastal Commission's decision.

IT WAS MOVED BY COUNCIL MEMBER SCHOEFFEL, SECONDED BY COUNCIL MEMBER OLVERA, THAT THE CITY COUNCIL HOLD A SECOND READING AND ADOPT **ORDINANCE 16-05** ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA16-0001 TO AMEND THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN; SECTION 4.0 TO ADDRESS PUBLIC ACCESS OVER SPECIFIED ACCESS WAYS IN THE RESIDENTIAL PORTION OF THE HEADLANDS AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA16-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.*

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  
ABSENT: None

## **PUBLIC COMMENTS**

Carole Weling, Capistrano Beach, thanked Council Member Olvera for his service on the Council. She reported that she did not receive notice of tonight's meeting and questioned whether it was a violation of the Brown Act.

Lynn Smith, Capistrano Beach, asked for information on how to obtain the compensation paid to Code Enforcement Officers.

George Covic, Capistrano Beach, spoke about short term rentals and his opposition to them.

Joanie McKnight, Dana Point, spoke about Niguel Beach Terrace. She recommended that the City Council look at what other beach cities were doing and learn from them.

## **PUBLIC HEARINGS**

There were no Public Hearings.

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## UNFINISHED BUSINESS

6. **SECOND READING AND ADOPTION OF ORDINANCE WITH CALIFORNIA COASTAL COMMISSION SUGGESTED MODIFICATIONS TO THE CITY'S APPROVED ZONE TEXT AMENDMENT ZTA13-0001, LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0001; SPECIFIC PLAN AMENDMENT SPA13-0001, AND LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0002 TO AMEND THE CITY'S ZONING ORDINANCE AND THE DANA POINT SPECIFIC PLAN TO ALLOW SHORT TERM RENTALS IN ALL ZONING DISTRICTS WHERE RESIDENTIAL USES ARE ALLOWED**

City Manager Chotkevys introduced the item and Planning Manager Schneider provided a staff report and PowerPoint presentation.

Council Member Schoeffel asked if there was anything in this Ordinance that would allow the California Coastal Commission any jurisdiction beyond what the Coastal Act of 1976 would allow. Planning Manager Schneider replied no.

Council Member Olvera asked staff to describe a nexus between short term rentals and sober living homes.

City Manager Chotkevys replied that tonight's discussion does not include sober living homes and he felt that it would be inappropriate to them bring up in this context.

City Attorney Munoz added that the proposed Ordinance applies equally to any home that is renting on a short term basis.

Council Member Olvera asked about the homes that may not have licenses but were renting short term.

Code Enforcement Officer Harris replied that there were about 40 homes that were unlicensed.

City Manager Chotkevys asked how Dana Point compares to other cities in the number of rentals. Code Enforcement Officer Harris replied much lower than the others.

Council Member Olvera asked to define short term rentals and boarding houses.

Planning Manager Schneider replied that they each had a different definition in the Zoning Ordinance.

Council Member Olvera asked if there was a nexus between short term rentals and commercial use.

Planning Manager Schneider replied that they were a residential use under this Ordinance.

City Attorney Munoz clarified that short term rentals were a business, the City has business regulations that apply to them, and they pay transient occupancy tax. He added that if the Ordinance was adopted that it would be a use allowed in residential areas.

Council Member Olvera asked how B&B's fit into this equation.

Planning Manager Schneider replied that they have their own unique set of regulations.

Council Member Olvera asked if the Council could separate coastal and non-coastal zone.  
Planning Manager Schneider replied that the Council could bifurcate the Zoning Ordinance and essentially have two chapters.

Council Member Olvera asked how far the coastal zone extends inland.  
Planning Manager Schneider replied that by definition it is 1,000 yard boundary, with some areas larger due to tributaries and bluff tops.

Council Member Olvera stated that there could be a coastal zone and a non-coastal zone permit at some future date.  
Planning Manager Schneider replied yes.

Council Member Olvera asked how my new houses have been built in the last 5-10 years.  
Director Luna-Reynosa replied that she did not have that information.

Council Member Muller asked if approving 5.38 would give the Coastal Commission jurisdiction unless the Council bifurcates the Ordinance.  
City Attorney Munoz replied that he did not think so. He stated that the City Council could adopt a different set of regulations for the non-coastal zone areas of the city.

Council Member Muller stated that there seemed to be grey area and the question of whether the Coastal Commission jurisdiction stretches throughout the City.  
City Attorney Munoz replied that the California Coastal Commission does not have jurisdiction other than in the coastal zone.

Council Member Muller asked if it would be cleaner to start with two separate Ordinances.  
City Attorney Munoz replied that was how this process had started but the Coastal Commission wanted the business regulations included within the Local Coastal Plan Amendment.

Council Member Muller asked if it would be easier to do separate Ordinances.  
City Attorney Munoz replied that is was more of a policy question for the Council.

Council Member Olvera asked if the Council were to bifurcate the Ordinance, what would happen to those who were licensed.  
City Attorney Munoz replied that would be a question for the Council. He stated that in the past the Council made a policy choice which allowed people to continue their short term rentals with the caveat that it was pending the Coastal Commission's decision and that in the event the program was denied that they would have to cease the practice.

Council Member Schoeffel asked in the business of short term rentals, what the permitted use within the unit is.  
City Attorney Munoz replied that residential property owners are allowed to be engaged in the business of short term rentals.

Council Member Schoeffel asked if the permitted use was a residence.  
City Attorney Munoz replied yes.

Council Member Schoeffel asked how many of the areas in the coastal zone were within homeowners associations.

Planning Manager Schneider replied that the majority of the area is within a homeowners association.

Council Member Schoeffel asked whether there was discussion by the Coastal Commission whether private self-determination should apply in the coastal zone.

Director Luna-Reynosa replied yes and that it was the most collaborative that they had been. She stated that Coastal staff did agree to recommend to the Commission to allow the restriction within the homeowners associations.

Council Member Schoeffel stated that if the Council were to accept or reject the Ordinance that the Coastal Commission may not allow that next time.

Director Luna-Reynosa replied that he was correct.

Council Member Muller asked if staff had a map of the coastal zone.

Director Luna-Reynosa replied that she did not have one with her.

Mayor Tomlinson opened the Public Comments.

William Matthies, Dana Point, spoke of complaints regarding short term rentals on Beach Road and the lack of enforcement. He stated that he would like regulations that can be enforced and that make sense to everyone. He added that he did not support the Ordinance.

Charles Glauser, Dana Point, spoke of his experience in owning a short term rental. He urged the Council to approve the Ordinance.

Jason Colaco, Dana Point, stated that their group "Dana Point Citizens for Property Rights" reached out to the vocally in opposition of short term rentals but they could not tell them what the problems were. He added that he supports the Ordinance.

Jim Cobb, Dana Point, stated that he owns a short term rental and supports the Ordinance. He urged the Council to keep what works and improve upon it.

Markus Lenger, Capistrano Beach, stated that he was opposed to the way the Ordinance is written.

Jack Lanier, Dana Point, felt that most owners of short term rentals go over and above what is required. He reported that he requires a four day minimum. He stated that he supports a regulated program.

Carole Weling, Capistrano Beach, stated that the City Council was not prepared to vote on this issue based on the questions they had asked of the City Attorney. She felt that the insurance requirement should be increased and was concerned about the City's liability.

Bryan Rupke, Capistrano Beach, spoke of their duplex and how they vacation rent one of the units. He asked the City Council to consider the facts and to adopt the Ordinance.

Deanna Slocum, Capistrano Beach, stated that she owns short term vacation rentals and spoke of the controls she uses to vet her guests.

Miriam Rupke, Capistrano Beach, stated that transient occupancy tax is responsible for many of the improvements that are made in the City. She added that the City is built on tourism and that she supports allowing short term rentals.

Shevy Akason, Dana Point, encouraged the Council to approve the Ordinance. He felt that if the Council rejected the Ordinance, that the relationship with the Coastal Commission would be compromised and it would be difficult to get approval on upcoming projects.

Ava Colaco, Dana Point, stated that Dana Point was a nice city and felt that we should share it with others.

Shilpa Colaco, Dana Point, stated that she supports the Ordinance as it provides mechanisms to allow vacation rentals as well as to control and effectively manage them.

Krimzeh Akason, Dana Point, spoke about how her family rents their home out during the summer which allows them to be able to travel and also use vacation rentals.

Alyssa Hendrie, Dana Point, spoke about her experiences in operating a short term rental.

Shevy Akason (speaking on behalf of Dave Hanks, Dana Point) asked for adoption of the Ordinance.

Brian Randall, Dana Point, asked the City Council to approve the Ordinance as he felt that the process works.

Dan Snipes, Dana Point, stated that he was a short term rental owner. He felt that the City was on the right track requiring a permit to operate. He added that they should not be penalized for those who do not follow the rules.

Chene Polo, Dana Point, stated that she had terrible experiences with long term renters. She added that she operates her property as a short term rental with a minimum seven day stay. She stated that she supports the Ordinance.

William Everett, Dana Point, stated that he was a short term rental owner with very rewarding experiences. He added that he supports the Ordinance.

Betha Everett, Dana Point, stated that she enjoys operating a short term rental.

Yuri Cramer, Dana Point, stated that she supports allowing short term rentals.

Linda Androvich, Dana Point, spoke of her positive experience in owning a vacation rental.

Nancy Warner, Temecula, asked the City Council to approve the Ordinance.

Mayor Tomlinson recessed the meeting at 8:18 p.m. and reconvened the meeting at 8:26 p.m.



Keith Offel, Placentia, shared his experience in owning a short term rental. He encouraged the City Council to approve the Ordinance.

Pam Offel, Placentia, stated that she supports short term rentals and asked the City Council to approve the Ordinance.

Seth Hansen, Dana Point, spoke of his family's experience using short term rentals when they travel.

Cade Hansen, Dana Point, spoke of the benefits of using short term rentals around the world.

Angela Hansen, Dana Point, stated that she supports short term rentals.

Jon Hansen, Dana Point, stated that he was an owner/operator of a short term rental. He felt that the Ordinance was working and that there was no need to change it.

Robert Colacion, Fullerton, stated that he supports short term rentals and shared that he was an owner of one in Niguel Beach Terrace. He felt that coastal communities were perfect for short term rentals.

Carla Moore, Irvine, urged the City Council to continue to allow short term rentals and offered to serve on a task force to help self-police the process.

Jeff Perry, Dana Point, stated that he was a short term rental owner and that he supported the Ordinance.

Cynthia Carol, Dana Point, spoke of her experience with short term rentals and asked the Council to approve the Ordinance.

Jaime Hermosillo, Dana Point, asked the City Council to approve the Ordinance.

Gabrielle Buckley, Dana Point, encouraged the City Council to approve the Ordinance.

Corinne Conklin, Laguna Beach, shared one of the positive comments that she had received regarding her short term rental and asked the Council to continue the program.

Carey Conklin, Laguna Beach, spoke of the many positives that short term renters offer the community and asked the Council to continue the program.

Lynn Smith, Capistrano Beach, stated that she was not opposed to short term rentals in commercial areas. She asked the City Council to not approve the Ordinance.

Wayne Via, Dana Point, spoke of his experience living next to a short term rental and stated that he did not support the program.

Ambrose Masto, Dana Point, stated that he did not support the Ordinance as it was currently written.

Keith Fullenwider, Capistrano Beach, stated that the Ordinance does not limit the number of rentals allowed.

Markus Lenger (speaking on behalf of Michael Schuster, Capistrano Beach) spoke of the City Anaheim's ban on short term rentals. He stated that he does not support allowing short term rentals.

Barbara Wilson (speaking on behalf of Sandie Iverson, Capistrano Beach) stated that the Ordinance did not prevent clustering of the short term rentals and that there was no cap on the density. She felt that there needs to be more study on this use.

Brenda Anderson (speaking on behalf of Alan Bell, Dana Point), stated that he does not support the Ordinance as he felt that the City was turning over control to the Coastal Commission.

Scott Minami, Lake Forest, urged the City Council to approve the Ordinance.

Patrick Cornejo, Fullerton, stated that he supports short term rentals.

Chris Koerner, Capistrano Beach, stated that he is a short term rental owner and felt that the process works.

Ann Romano, Capistrano Beach, stated that she does not support short term rentals.

James Kelly, Dana Point, asked the City Council to postpone voting on short term rentals until after the upcoming election to allow voters to choose the two new Council Members which would allow them to vote on this issue. He was concerned if the Council did not bifurcate the Ordinance now, it would be too difficult in the future.

Carol Kelly, Dana Point, asked the City Council to vote no on the Ordinance or to postpone the vote until after the upcoming election due to the long-term effects.

Betty Hill, Capistrano Beach, asked the City Council to postpone voting until the meeting on September 20<sup>th</sup> when the issue was originally scheduled for discussion. She stated that conditions in the community have changed since 2007 and felt that a more comprehensive Ordinance which addresses commercial activity in residential areas could solve other issues.

Susanne Christensen, Dana Point, spoke of her experience living next door to a vacation rental and added that it was her experience that she much prefers a short term renter over long-term renters.

Toni Nelson (speaking on behalf of Denise Iger, Capistrano Beach) stated that based on her experience in representing homeowner associations who wish to prohibit short term rentals she could not support the Ordinance.

Toni Nelson, Capistrano Beach, stated that she does not support the Ordinance because it does not treat all of the citizens equally, it breaks the promise of residential zoning, it offers no protection over proliferation, and many of the residents were not part of the discussion over nine years ago.

Buck Hill, Capistrano Beach, felt that this was the biggest issue the Council would be voting on for the City. He stated that a town hall meeting should be held and all voices should be heard.

Ross Teasley, Dana Point, posed a number of questions including whether Coastal Commission approval would be required for a moratorium on short term rentals or the limitation of the use in the community.

Sharon Sileci, Dana Point, stated that she does not support short term rentals as they have changed the neighborhood.

Chris Jones, Irvine, felt that the short term rental program was working and that he supports the Ordinance.

Jean Borman, Dana Point, stated that she does not support short term rentals as not knowing who her neighbors are was very scary to her.

Sharon Harshman, Dana Point, spoke of her experience operating her short term rental. She asked the City Council to approve the Ordinance.

Shelley Furse, Dana Point, stated that she did not support short term rentals because of the impact on the neighborhood. She added that if the City Council had to adopt the Ordinance to include a 30 day requirement.

Brian Fry, Dana Point, stated that he supports short term rentals.

Bradley Dendulk, San Clemente, stated that he supports short term rentals.

Earl Gilday, Capistrano Beach, suggested that the vote not be taken until after the election. He felt that the Council was prepared to make a decision on this tonight.

Mark Zanides, Dana Point, stated that he did not support the proposed Ordinance as he felt that it gave too much power to the Coastal Commission.

Nadia Khalil, Capistrano Beach, stated that she did not support short term rentals in residential zones.

Madeline Utchford, Capistrano Beach, stated that she did not support short term rentals in residentially zoned neighborhoods.

Mayor Tomlinson closed the Public Comments.

Council Member Schoeffel asked City Attorney Munoz if he said that this Ordinance would cede sovereignty to the California Coastal Commission.

City Attorney Munoz replied that he did not say that. He stated that the City has the responsibility and obligation to review Local Coastal Plan Amendments. He added that it is in the City's power and jurisdiction first, then the Coastal Commission has to approve it. He stated that regarding land use issues, both the City and the Coastal Commission have authority within the coastal zone, but outside of the coastal zone the Coastal Commission has no jurisdiction.

Council Member Schoeffel asked if the City's source of authority within the coastal zone was delegated by the Coastal Commission.

City Attorney Munoz replied that the City has police powers and has had that prior to the Coastal Act. He stated that with the adoption of the Coastal Act that the California Coastal Commission has the ultimate authority on land use decisions in the coastal zone.

Council Member Schoeffel stated that with a certified Local Coastal Plan, the City is effectively delegating authority to the Coastal Commission.

City Attorney Munoz replied that on land use issues yes, but for this issue there were two Ordinances, one for business regulations and one for land use which indicated that in the following zones you may operate a short term rental. He stated that the Coastal Commission combined the business regulations with the land use. He felt it would be extreme for the Coastal Commission to exert their authority outside of the coastal zone.

Council Member Schoeffel asked staff what the basis of the recommendation action was for the adoption of these Ordinances.

Director Luna-Reynosa replied that this activity was occurring even though it was prohibited and the ability to regulate was difficult. She stated that this was a compromise Ordinance.

Planning Manager Schneider added that the City Council adopted this Ordinance in 2014. He stated that the modifications were minor from a land use perspective.

Council Member Schoeffel asked what would happen if action was not taken by October 14<sup>th</sup>.

Planning Manager Schneider replied that the City would have to start over.

Council Member Muller asked where in the Ordinance are the di minimis actions the City could take.

Director Luna-Reynosa replied that it was not in the Ordinance. She stated that the word "modify" was removed by the Coastal staff after discussion with them.

Council Member Muller asked what the threshold was to determine when it goes to the Executive Director.

Director Luna-Reynosa replied that the Ordinance does not provide that language.

Council Member Muller asked if it all goes to the Executive Director on whether the City violated their own Ordinance.

Director Luna-Reynosa replied that the Executive Director would make that determination. She stated that the staff report that went to the Commission provided specific examples of what would constitute that.

Council Member Muller asked if there were options if the City disagrees with the Executive Director's decision.

Director Luna-Reynosa replied that if the Executive Director decides, it could be considered a major Local Coastal Plan Amendment. She added that anytime a modification is made, it is their determination.

Mayor Tomlinson asked about general calls for service in the City.

Lt. Chilton replied that disturbance calls were the most common.

Mayor Tomlinson asked if they were specific to short term rentals.  
Lt. Chilton replied no.

Council Member Olvera asked about the comment made regarding slow response time.  
Lt. Chilton replied that all calls are prioritized. He stated that party calls are responded to under 20 minutes. He added that he monitors the responses and they have been within the parameters.

Mayor Tomlinson asked about the insurance requirements and who would be covered by it.  
Assistant City Manager Killebrew replied that the property owner's insurance requirement was added by the Planning Commission.

Mayor Tomlinson asked if the City had any liability with a rental.  
City Attorney Munoz replied that it would be extremely difficult to hold the City liable. He stated that the City would be immune based on solely issuing the permit. He added that a City employee would have to cause damage on the property for the City to be liable.

Council Member Schoeffel stated that three years ago, this Ordinance seemed to be a good solution and that the City would be losing a lot if the Council lets this go past October 14<sup>th</sup>. He asked what were the limitations in bifurcating the Ordinances.

City Attorney Munoz replied that the City Council could make changes to the Ordinance without going back to the Coastal Commission if the changes were not made in the Coastal Zone.

Council Member Schoeffel stated that he did not think the City would get the same deal if the Ordinance was not adopted and the City started the process over.

Mayor Tomlinson stated that he had been concerned with sovereignty issues after the last Council meeting. He added that he agreed with Council Member Schoeffel. He stated that there has been a lack of calls and problems over the past three years and from what he has heard is that the properties are managed well. He asked how the complaints would be handled if there were no Ordinance.

City Attorney Munoz replied that the Sheriff's Department had handled the issue previously.

Mayor Tomlinson asked if someone was abusing short term rentals would a lawsuit be filed through the City Attorney's office.

City Attorney Munoz replied yes most likely that is how it would be handled; either through a criminal or civil complaint.

Mayor Tomlinson asked how long it would take to prosecute an operator who refused to quit.

City Attorney Munoz replied that it was a three to six month process if it was criminal and a year to a year and a half if it was civil.

Mayor Tomlinson asked how long it would take to revoke a permit.

City Attorney Munoz replied that there was a 30-60 day process with progressive discipline.

Mayor Tomlinson stated that he liked the peer review on the websites and that he was supportive of property rights. He felt that there were plenty of opportunity for people to report any problems.

Council Member Olvera stated that you are not protected if you live in a homeowners association. He added that if you need help to report issues to the City and let staff handle it. He felt that the Ordinance had reached a common ground.

Council Member Muller stated that the City needs to be able to react and change as needed. He felt that it was setting bad precedent allowing the Coastal Commission to take control. He added that he supported allowing short term rentals but does not want to give up the control.

Mayor Pro Tem Viczorek stated that he could not get around the ceding of sovereignty issues. He felt that the City Council needs to stand up to the Coastal Commission and not be steam rolled by them. He urged the City Council to reconsider their vote and realize that it was important that the City send a unanimous message that the Council stands united on this issue that Dana Point will retain their local governance over issues that affect the residents.

Council Member Schoeffel stated that there has been a lot of talk about likening the sober living problem with transient use problems and asked the City Attorney if he had any advice for the Council in terms of whether and to what extent could any of that rhetoric be a part of the decision here this evening.

City Attorney Munoz replied that any suggestion that the City Council is voting in favor or against the proposal tonight because of a desire to discriminate against a protected class, in his opinion was not accurate. He stated that it was not supported by the City's record and felt that there has been a healthy debate on the issue of short term rentals. He added that it did concern him that there was a record out there of persons want to use this issue in connection with the sober living issue because one really has nothing to do with the other.

Council Member Schoeffel stated that it was his intent to deliberate and vote on the short term rental Ordinance.

IT WAS MOVED BY COUNCIL MEMBER SCHOEFFEL, SECONDED BY COUNCIL MEMBER OLVERA, THAT THE CITY COUNCIL HOLD A SECOND READING AND ADOPT SUGGESTED MODIFICATIONS AS APPROVED BY THE CALIFORNIA COASTAL COMMISSION IN ITS CERTIFICATION OF THE CITY OF DANA POINT LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0001 AND LCPA13-0002 AND FORWARD THE ADOPTED SUGGESTED MODIFICATIONS TO THE COASTAL COMMISSION FOR FINAL CERTIFICATION:

**ORDINANCE 16-06:**

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA13-0001 TO ALLOW SHORT TERM RENTALS IN ALL THE ZONING DISTRICTS WHERE RESIDENTIAL USES ARE ALLOWED AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION; and*

**ORDINANCE 16-07:**

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING SPECIFIC PLAN AMENDMENT SPA13-0001 TO ALLOW SHORT TERM RENTALS IN ALL THE DISTRICTS WHERE RESIDENTIAL USES ARE ALLOWED WITHIN THE SPECIFIC PLAN'S BOUNDARIES, AND SUBMISSION AS PART OF LOCAL COASTAL*

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*PROGRAM AMENDMENT LCPA13-0002 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.*

The motion carried by the following vote:

AYES: Council Member J. Scott Schoeffel, Council Member Carlos N. Olvera, and Mayor John A. Tomlinson  
NOES: Council Member Joseph L. Muller and Mayor Pro Tem Richard A. Viczorek  
ABSENT: None

## **NEW BUSINESS**

There was no New Business.

## **PUBLIC COMMENTS (Continued)**

There were no additional Public Comments received.

## **STAFF REPORTS**

There were no Staff Reports.

## **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 Muller reported that Sunday is September 11<sup>th</sup> every fire station in Orange Council will hold a memorial at 9:03 a.m. at their flag pole outside of their station. He stated that the public is invited. He added that he would submit his list of meetings to the City Clerk.

Mayor Tomlinson stated that he would turn in his list of meetings to the City Clerk.

## **ADJOURNMENT**

There being no further business before the City Council at this session, Mayor Tomlinson adjourned the meeting at 11:43 p.m. and announced that the next Regular Meeting of the City Council will be September 20, 2016, 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 SEPTEMBER 20, 2016

**Meetings attended since August 16, 2016:**

**Mayor John A. Tomlinson**

August 18 - Ocean Institute Board of Directors Meeting  
August 20 - Lobster Fest  
August 29 - Dana Point Harbor 50 Year Time Capsule Opening

**Council Member Joseph A. Muller**

August 20 - Lobster Fest  
August 23 - Short Term Rental meeting with Dana Point Residents  
August 24 - League of Cities  
August 25 - OCFA  
August 29 - Dana Point Harbor 50 Year Time Capsule Opening  
September 1 - OCFA

**Council Member Carlos N. Olvera**

August 18 - Vector Control Meeting  
August 29 - Dana Point Harbor 50 Year Time Capsule Opening  
August 31 - Meeting with Tom Volkmann