
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
DECEMBER 14, 2005**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Rayfield at 5:01 p.m. in the Dana Point City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point.

ROLL CALL

PRESENT: Wayne Rayfield, Mayor
Lara Anderson, Mayor Pro Tem
Russell Chilton, Council Member
James V. Lacy, Council Member

ABSENT: Diane L. Harkey, Council Member

STAFF PRESENT: Douglas Chotkevys, City Manager; Patrick Muñoz, City Attorney; Sharie Apodaca, Director of Administrative Services; Andy Glass, Accounting Manager; Elizabeth Ehring, City Clerk; Cathy Catlett, Assistant City Clerk; Kyle Butterwick, Director of Community Development; John Tilton, City Architect/Planning Manager; Brad Fowler, Director of Public Works/City Engineer; Matt Sinacori, City Engineer; Mike Rose, Emergency and Support Services Manager; Mark Billings, Chief of Police; Kathy Ward, Executive Secretary.

CLOSED SESSION

City Attorney Muñoz indicated 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), (3 cases)
- B. CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION, Government Code § 54956.9 (c), (2 cases)

Mayor Rayfield recessed the meeting into a Closed Session at 5:02 p.m. pursuant to Government Code Section 54956 et. seq.

RECONVENE CITY COUNCIL MEETING

Mayor Rayfield reconvened the meeting at 6:02 p.m. All Council Members were present, with the exception of Council Member Harkey. Mayor Rayfield announced that Council Member Harkey was absent due to illness.

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PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Lacy.

INVOCATION

The Invocation was led by Cecil Cowder.

PRESENTATIONS AND PROCLAMATIONS

Certificate of Recognition – Ocean Institute

Mayor Rayfield acknowledged the crew of the Spirit of Dana Point for its rescue efforts for a downed Cessna plane, which crashed into the ocean in close proximity to its ship. In attendance to accept the certificate were Dan Stetson, Adam Himelson, Jim Wehan, John Kraus, Art Zamarripa, Philip Barquer and Cris Wallace.

Presentation – Update on Orange County Human Relations Commission

Bill Wood, Chairman, Orange County Human Relations Commission, provided an update on the Commission. Mr. Wood presented the City of Dana Point with a Certificate of Appreciation for its membership in the Orange County Human Relations Commission, which Mayor Rayfield accepted.

Presentation of Tsunami Ready Certification by the National Weather Service

City Manager Chotkevys gave a brief report on the City's tsunami emergency plan. Emergency and Support Services Manager Rose introduced Keith Harrison, Deputy Regional Administrator OES, Ed Clark, Warning Coordinator Meteorologist, and Jim Purpura, Meteorologist-in-Charge of the National Weather Service, who presented the City of Dana Point with a Storm and Tsunami Ready Certification, which Mayor Rayfield accepted.

CONSENT CALENDAR

Members of the public removed Items 10, 11 and 12 from the Consent Calendar.

IT WAS MOVED BY MAYOR PRO TEM ANDERSON, SECONDED BY COUNCIL MEMBER CHILTON, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEMS 10, 11 AND 12.

The motion carried by the following vote:

AYES: Council Members Chilton, Lacy,
Mayor Pro Tem Anderson and Mayor Rayfield
NOES: None
ABSENT: Council Member Harkey

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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. PLANNING COMMISSION MEETING MINUTES, MEETING OF NOVEMBER 16, 2005

RECEIVED AND FILED.

3. PLANNING COMMISSION ACTIONS, MEETING OF DECEMBER 7, 2005

RECEIVED AND FILED.

4. YOUTH BOARD MEETING MINUTES, MEETING OF NOVEMBER 17, 2005

RECEIVED AND FILED.

5. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

6. CLAIMS AND DEMANDS

RECEIVED AND FILED.

7. HISTORIC PRESERVATION AGREEMENT (MILLS ACT) FOR THE PROPERTY LOCATED AT 1 CAPISTRANO BY THE SEA (AKA DOLPH HOUSE) [STRATEGIC PLAN: EVALUATE LAND USE ISSUES TO ENSURE THAT THE GOALS, POLICIES AND PROGRAMS OF THE GENERAL PLAN REFLECT THE COMMUNITY'S VISION AND MISSION]

AUTHORIZED THE MAYOR TO SIGN A HISTORIC PROPERTY PRESERVATION AGREEMENT WHICH WOULD ALLOW THE PROPERTY OWNER, FREDERICK J. KIKO, PROPERTY INVESTORS, LLC, OF THE HISTORIC STRUCTURE LOCATED AT 1 CAPISTRANO BY THE SEA, TO PARTICIPATE IN THE STATE'S MILLS ACT PROGRAM.

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8. **HISTORIC PRESERVATION AGREEMENT (MILLS ACT) FOR THE PROPERTY LOCATED AT 34031 CHULA VISTA** *[STRATEGIC PLAN: EVALUATE LAND USE ISSUES TO ENSURE THAT THE GOALS, POLICIES AND PROGRAMS OF THE GENERAL PLAN REFLECT THE COMMUNITY'S VISION AND MISSION]*

AUTHORIZED THE MAYOR TO SIGN A HISTORIC PROPERTY PRESERVATION AGREEMENT WHICH WOULD ALLOW THE PROPERTY OWNER, MICHELLE HOOVER, OF THE HISTORIC STRUCTURE LOCATED AT 34031 CHULA VISTA, TO PARTICIPATE IN THE STATE'S MILLS ACT PROGRAM.

9. **HISTORIC PRESERVATION AGREEMENT (MILLS ACT) FOR THE PROPERTY LOCATED AT 34041 CHULA VISTA** *[STRATEGIC PLAN: EVALUATE LAND USE ISSUES TO ENSURE THAT THE GOALS, POLICIES AND PROGRAMS OF THE GENERAL PLAN REFLECT THE COMMUNITY'S VISION AND MISSION]*

AUTHORIZED THE MAYOR TO SIGN A HISTORIC PROPERTY PRESERVATION AGREEMENT WHICH WOULD ALLOW THE PROPERTY OWNER, TIM HARDY, OF THE HISTORIC STRUCTURE LOCATED AT 34041 CHULA VISTA, TO PARTICIPATE IN THE STATE'S MILLS ACT PROGRAM.

10. **COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE YEAR ENDED JUNE 30, 2005** *[STRATEGIC PLAN: ACHIEVE TOTAL EXCELLENCE IN MUNICIPAL SERVICES AND CITY ADMINISTRATION/PLANNING WITH EXCELLENT CUSTOMER SERVICE AND COST-EFFECTIVENESS]*

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

City Manager Chotkevys presented the staff report and expressed appreciation to Director of Administrative Services Apodaca and Accounting Manager Glass for their efforts in this matter.

Dr. Jim Seitz, Dana Point, spoke regarding budget issues, specifically the Housing Element and affordable housing.

IT WAS MOVED BY COUNCIL MEMBER CHILTON, SECONDED BY MAYOR PRO TEM ANDERSON, TO RECEIVE AND FILE THE COMPREHENSIVE ANNUAL FINANCIAL REPORT ("CAFR") FOR THE YEAR ENDED JUNE 30, 2005.

The motion carried by the following vote:

AYES: Council Members Chilton, Lacy,
Mayor Pro Tem Anderson and Mayor Rayfield
NOES: None
ABSENT: Council Member Harkey

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- 11. ADJUSTMENT TO THE EXISTING AGREEMENT FOR LEGAL SERVICES – RUTAN AND TUCKER** *[STRATEGIC PLAN: ACHIEVE TOTAL EXCELLENCE IN MUNICIPAL SERVICES AND CITY ADMINISTRATION/PLANNING WITH EXCELLENT CUSTOMER SERVICE AND COST-EFFECTIVENESS]*

This item was removed from the Consent Calendar by members of the public.

City Manager Chotkevys presented the staff report.

Judy Rice, Laguna Hills and Hemet, spoke regarding Rutan and Tucker's involvement in the recent mobile home park closure.

Dr. Jim Seitz, Dana Point, spoke regarding the City's legal issues and affordable housing.

IT WAS MOVED BY COUNCIL MEMBER CHILTON, SECONDED BY COUNCIL MEMBER LACY, TO AUTHORIZE THE MAYOR TO EXECUTE AN AMENDED PROFESSIONAL SERVICES AGREEMENT WITH RUTAN AND TUCKER.

The motion carried by the following vote:

AYES: Council Members Chilton, Lacy,
Mayor Pro Tem Anderson and Mayor Rayfield
NOES: None
ABSENT: Council Member Harkey

- 12. STRATEGIC PLAN AMENDMENT REGARDING AFFORDABLE HOUSING AND CERTIFICATION OF HOUSING ELEMENT** *[STRATEGIC PLAN: EVALUATE LAND USE ISSUES TO ENSURE THAT THE GOALS, POLICIES AND PROGRAMS OF THE GENERAL PLAN REFLECT THE COMMUNITY'S VISION AND MISSION]*

This item was removed from the Consent Calendar by members of the public.

City Manager Chotkevys presented the staff report.

Dr. Jim Seitz, Dana Point, expressed concerns regarding timelines and the Closure Impact Report (CIR) for the mobile home park closure.

Judy Rice, Laguna Hills and Hemet, spoke regarding the City's Housing Element and the time schedule for implementation of projects.

Pepi Weitzman, Mission Viejo and Hemet, spoke regarding the recent mobile home park closure.

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Kathy Weaver, Palm Coast, Florida, spoke regarding the recent mobile home park closure.

Donna Faass, Capistrano Beach, spoke regarding the recent mobile home park closure and affordable housing.

IT WAS MOVED BY MAYOR PRO TEM ANDERSON, SECONDED BY COUNCIL MEMBER CHILTON, TO AMEND THE CITY OF DANA POINT STRATEGIC PLAN IN ORDER TO PLACE A HIGHER PRIORITY ON THE CITY'S AFFORDABLE HOUSING PROGRAM AS WELL AS TO IDENTIFY THE NEED TO CERTIFY THE CITY'S HOUSING ELEMENT BY HCD ONCE IT IS UPDATED. IN CONJUNCTION WITH THIS RECOMMENDATION, EXPLORE THE CREATION OF AFFORDABLE HOUSING UNITS AS DEVELOPMENT IS BROUGHT FORWARD IN THE CITY. IN THOSE CASES WHERE THE CREATION OF AFFORDABLE HOUSING IS NOT VIABLE, THE CITY SHOULD ADOPT AN IN LIEU FEE PROGRAM THAT BETTER REFLECTS THE COST OF HOUSING IN SOUTH ORANGE COUNTY.

The motion carried by the following vote:

AYES: Council Members Chilton, Lacy,
Mayor Pro Tem Anderson and Mayor Rayfield
NOES: None
ABSENT: Council Member Harkey

13. ADOPTION OF A RESOLUTION APPROVING A NOTICE OF COMPLETION FOR THE CONSTRUCTION OF THE SALT CREEK OZONE TREATMENT FACILITY [RESTORE AND MAINTAIN THE INTEGRITY OF OUR OCEAN WATERS AND BEACHES]

ADOPTED RESOLUTION NO. 05-12-14-01, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A NOTICE OF COMPLETION FOR THE CONSTRUCTION OF THE SALT CREEK OZONE TREATMENT FACILITY;

AND DIRECTED STAFF TO TRANSFER ALL PROJECT SAVINGS TO THE CAPITAL IMPROVEMENT PROGRAM RESERVE FUND.

ORAL REPORTS

There were no Oral Reports.

PUBLIC COMMENTS

Mayor Rayfield opened the meeting for public comments.

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Ted Toch, Dana Point, spoke regarding the De Carli project and requested the City to revoke current permits for the project.

Newton Edwards, Dana Point, spoke regarding the alleged misinformation in the variance application by Mr. De Carli and requested a public hearing to determine the relevance of this.

Robert Traphagen, Dana Point, spoke regarding the recent mobile home park closure and the Closure Impact Report (CIR) for the park.

Jack Brick, Dana Point, spoke regarding the Hamilton/De Carli case, which the court has already ruled upon.

Paula Campbell, Dana Point, spoke regarding the De Carli project and requested a new Public Hearing on the matter.

Jack Hamilton, Dana Point, spoke regarding the De Carli project and alleged problems with the variances granted.

Norm Jackes, Dana Point, spoke regarding the De Carli project and requested a new Public Hearing on the matter.

Judy Rice, Laguna Hills and Hemet, spoke regarding the proposed funicular agreement for the Headlands property.

Jim De Carli, Dana Point, spoke regarding his project on Blue Lantern and acknowledged the court's decision in the legal matter.

Dr. Jim Seitz, Dana Point, spoke regarding the proposed funicular agreement for the Headlands property.

Kathy Weaver, Palm Coast, Florida, spoke regarding the recent mobile home park closure and requested a meeting with City staff.

Moree Hasty, Capistrano Beach, Community Emergency Response Team (CERT) Member, spoke of the need for efficient emergency plans.

Mayor Rayfield declared a recess at 8:03 p.m. and reconvened the meeting at 8:18 p.m. All Council Members were present with the exception of Council Members Harkey and Lacy.

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PUBLIC HEARINGS

There were no public hearings.

UNFINISHED BUSINESS

- 14. ADOPTION OF A RESOLUTION APPROVING A NOTICE OF COMPLETION FOR THE CONSTRUCTION OF THE STONEHILL DRIVE AND CAMINO CAPISTRANO INTERSECTION IMPROVEMENT PROJECT** *[STRATEGIC PLAN: MAINTAIN, MODERNIZE AND BEAUTIFY THE CITY'S INFRASTRUCTURE AND NEIGHBORHOODS]*

City Manager Chotkevys introduced Director of Public Works and Engineering Services Fowler, who presented the staff report along with a Power Point presentation of the project.

IT WAS MOVED BY MAYOR PRO TEM ANDERSON, SECONDED BY COUNCIL MEMBER CHILTON, TO ADOPT **RESOLUTION NO. 05-12-14-02**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A NOTICE OF COMPLETION FOR THE CONSTRUCTION OF THE STONEHILL AND CAMINO CAPISTRANO INTERSECTION PROJECT; AND (2) DIRECT STAFF TO TRANSFER ALL PROJECT SAVINGS TO THE CAPITAL IMPROVEMENT PROGRAM RESERVE FUND.

The motion carried by the following vote:

AYES: Council Member Chilton, Mayor Pro Tem Anderson
and Mayor Rayfield
NOES: None
ABSENT: Council Members Harkey and Lacy

NEW BUSINESS

- 15. GREASE INTERCEPTOR REBATE PILOT PROGRAM, CITY OF DANA POINT** *[STRATEGIC PLAN: RESTORE AND MAINTAIN THE INTEGRITY OF OUR OCEAN WATERS AND BEACHES]*

City Manager Chotkevys introduced Director of Public Works and Engineering Services Fowler, who presented the staff report.

Council Member Lacy returned to the Council Chamber at 8:31 p.m.

Richard Dietmeier, Dana Point, member of the Ocean Water Quality Subcommittee, spoke in support of the recommended action.

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IT WAS MOVED BY COUNCIL MEMBER LACY, SECONDED BY COUNCIL MEMBER CHILTON, TO (1) APPROVE THE PROPOSED GREASE INTERCEPTOR REBATE PILOT PROGRAM; AND (2) AUTHORIZE FUNDS FOR TWO (2) YEARS TO IMPLEMENT THE PROGRAM.

The motion carried by the following vote:

AYES: Council Members Chilton, Lacy, Mayor Pro Tem Anderson
and Mayor Rayfield
NOES: None
ABSENT: Council Member Harkey

16. ART IN PUBLIC PLACES – WYLAND WHALE SCULPTURE *[STRATEGIC PLAN: PROMOTE CULTURAL ARTS AND HUMAN SERVICES]*

Council Member Chilton recused himself from discussion of this item due to a conflict of interest and left the Council Chamber.

City Manager Chotkevys presented the staff report, along with a short film clip depicting Wyland's work in other cities.

Dr. Jim Seitz, Dana Point, expressed concerns regarding fiscal responsibility.

Anna Bryson, Dana Point, spoke in support of the sculpture.

Gary Newkirk, Dana Point, spoke in opposition to the sculpture.

Bob Becker, Dana Point, spoke in support of the sculpture but encouraged the use of a lesser-known artist to design the sculpture.

Karin Schnell, Dana Point, spoke in support of public art but suggested the formation of an art in public places advisory committee to assist in the design/artist selection process.

Robin Hall, Capistrano Beach, spoke in opposition to the sculpture due to the amount of taxpayer money to be spent on this.

Jim Miller, Dana Point, Chamber of Commerce Board Member, spoke in support of the sculpture and suggested formation of a coastal arts foundation to raise money for the project.

Bill Johnson, Dana Point, spoke in support of the sculpture.

Mary Jeffries, Dana Point, spoke in support of the sculpture.

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Mayor Rayfield summarized emails received by the City regarding the proposed sculpture from the following individuals:

Council Member Harkey expressed concerns regarding the cost of the sculpture as well as the proportion of it. Council Member Harkey suggested it may be better placed in the Harbor and should perhaps be a sculpture of a surfer.

Donna Kalez stated this was a wonderful opportunity that the City should act upon. Ms. Kalez felt this sculpture would be a landmark for Dana Point.

Tom Ignatovich, owner of Natale Coffee, supports the Wyland sculpture as a landmark of which to be proud.

Bill Agee, Capistrano Beach, suggested looking at the way in which the City manages and initiates public art, expressed concern regarding the cost, and noted other artists should be considered as well.

Laurie Smith, sculpture artist, expressed concern regarding the cost and supported a jury approach to selecting art.

David Busk, Dana Point property owner, expressed support of the sculpture and felt it was an opportunity for Dana Point to be internationally recognized.

Robin Hall, Capistrano Beach, expressed concern regarding the cost and suggested that other artists be considered for the project.

Julie Edwards, Aliso Viejo, representative of Wyland Worldwide, responded to questions from the City Council.

IT WAS MOVED BY MAYOR RAYFIELD, SECONDED BY MAYOR PRO TEM ANDERSON, TO 1) APPROVE THE CONCEPT AND LOCATION FOR THE PROPOSED WYLAND WHALE SCULPTURE; AND 2) DIRECT STAFF TO WORK WITH WYLAND AND HIS STAFF TO NEGOTIATE AND DEVELOP A PROPOSED PROJECT BUDGET, SCHEDULE AND RETURN WITH A FUNDING RECOMMENDATION AND A NEGOTIATED PROPOSED PROFESSIONAL SERVICES AGREEMENT FOR CITY COUNCIL CONSIDERATION IN JANUARY 2006.

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The motion carried by the following vote:

AYES: Mayor Pro Tem Anderson and Mayor Rayfield
NOES: Council Member Lacy
ABSENT: Council Member Harkey
ABSTAIN: Council Member Chilton

Council Member Chilton returned to the Council Chamber at 9:33 p.m.

CITY COUNCIL REORGANIZATION

A. COUNCIL REORGANIZATION

Dr. Jim Seitz, Dana Point, expressed gratitude to Council Member Lacy for his contributions and suggested consideration of this during deliberations for the appointment of Mayor.

Mayor Rayfield opened nominations for the position of Mayor to serve during 2006.

Council Member Chilton nominated Mayor Pro Tem Anderson. The nomination was seconded by Council Member Lacy. There were no further nominations.

Mayor Pro Tem Anderson was declared elected as Mayor by acclamation.

Mayor Anderson opened nominations for the position of Mayor Pro Tem to serve during 2006.

Council Member Lacy nominated Council Member Chilton. The nomination was seconded by Council Member Rayfield. There were no further nominations.

Council Member Chilton was declared elected as Mayor Pro Tem by acclamation.

B. RECOGNITION OF OUTGOING MAYOR

Mayor Anderson presented a gavel plaque to outgoing Mayor Wayne Rayfield in recognition of his service to the community as Mayor for the past year.

Outgoing Mayor Rayfield expressed his appreciation for the opportunity to serve as Mayor for the past year, thanking his colleagues for their support.

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Council Member Lacy expressed respect for outgoing Mayor Rayfield, thanked him for his service and commented on outgoing Mayor Rayfield's leadership getting the City to where it is today.

STAFF REPORTS

There were no Staff Reports.

COUNCIL REPORTS

Mayor Pro Tem Chilton recused himself from discussion of the item to be raised by Council Member Lacy due to a conflict of interest and left the Council Chamber.

Council Member Lacy noted, per Government Code Section 54954.2 which allows the addition of an item without posting on the agenda in order to direct staff to place a matter of business on the next agenda, he would like to include discussion of the De Carli matter at the January 11, 2006 meeting.

IT WAS MOVED BY COUNCIL MEMBER LACY, SECONDED BY COUNCIL MEMBER RAYFIELD, TO DIRECT STAFF TO PLACE ON THE JANUARY 11, 2006 AGENDA A PUBLIC HEARING TO DISCUSS THE POTENTIAL REVOCATION OF PERMITS IN THE DE CARLI MATTER.

The motion carried by the following vote:

AYES:	Council Members Lacy, Rayfield and Mayor Anderson
NOES:	None
ABSENT:	Council Member Harkey
ABSTAIN:	Council Member Chilton

Council Member Chilton returned to the Council Chamber.

Council Member Lacy commented on his attendance in October at the Police Canine Association demonstration on police dogs held at Cal State Fullerton. He stated it was fantastic to see the work that the dogs do for the Sheriffs Department.

Mayor Pro Tem Chilton remarked he hoped constituents were pleased with the direction the City Council was going in and that he was looking forward to 2006. He noted that newly elected Mayor Anderson will lead the City in the right direction.

Mayor Pro Tem Chilton wished everyone a Merry Christmas and a Happy Holiday.

Council Member Rayfield reported that for the next two weeks trash collection will be delayed one day due to the holidays and that street sweeping will not occur.

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Council Member Rayfield thanked the community for their support during his term as Mayor and noted he appreciated all input that he had received.

Council Member Rayfield wished everyone a Happy Holiday and best wishes for 2006.

Jim Howard, representing the Dana Point Town Center Subcommittee and the Board of Directors of the Chamber of Commerce, presented outgoing Mayor Rayfield with a Mont Blanc Commodore Series Pen and thanked him for his leadership.

Mayor Anderson thanked the community for its support during the past year.

Mayor Anderson wished everyone a Merry Christmas, Happy Holidays and a wonderful New Year.

Mayor Anderson invited everyone to enjoy the refreshments being served at the end of tonight's meeting.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Anderson declared the meeting adjourned at 9:55 p.m.

The December 28, 2005 Regular Meeting of the City Council will not be held due to the holiday closure of City Hall.

The next Regular Meeting of the City Council will be January 11, 2006 at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

ELIZABETH EHRING
CITY CLERK

APPROVED AT THE MEETING OF JANUARY 11, 2006