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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 9, 2005**

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**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 5:00 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  
Diane L. Harkey, Council Member  
James V. Lacy, Council Member

STAFF PRESENT: Douglas Chotkevys, City Manager; Patrick Muñoz, City Attorney; Sharie Apodaca, Director of Administrative Services; Cathy Catlett, Assistant City Clerk; Kyle Butterwick, Director of Community Development; Brad Fowler, Director of Public Works/City Engineer; Matt Sinacori, City Engineer; Cindy Asher, Administrative Manager; Brian McClure, Parks 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), (1 case)
- C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION, Government Code § 54956.9 (a), (1 case)

- 1. Name of Case: Brongo Construction v. City of Dana Point, Orange County Superior Court Case No. 04CC10068

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 Lacy.

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**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Veteran Bob Moore and the Veterans of VFW Post 9934.

**INVOCATION**

The Invocation was led by Reverend Paul Peck.

**PRESENTATIONS AND PROCLAMATIONS**

Certificate of Recognition – Doug Vivod, Volunteers in Police Support (V.I.P.S.)  
City Manager Chotkevys provided a brief summary of Doug Vivod's service to the City of Dana Point. Doug and his wife will be moving to Colorado and the City wishes to recognize and honor him for invaluable contributions to the City. Mayor Rayfield and Chief of Police Billings presented him with a Certificate of Recognition for his service as a volunteer member of the Volunteers in Police Support.

Mayor Rayfield also expressed appreciation to every member of the Volunteers in Police Services and to Nicole Hanson, Crime Prevention Specialist.

Family Week Proclamation

Mayor Rayfield presented a Proclamation to Alex Martinez, Dana Point Family Week Committee, declaring November 20 – 26, 2005, as Family Week to focus attention on the value and importance of the family. Mr. Martinez presented the City with a book of interesting antidotes in the eyes of children.

Business of the Month

Director of Administrative Services Apodaca gave a Power Point presentation of Killer Dana Surf Shop. Mayor Rayfield introduced owners Gary Wright, Chris Andrews and Steve Price and presented them with a Certificate of Recognition.

**CONSENT CALENDAR**

Council Member Harkey removed Item 9 from the Consent Calendar.

IT WAS MOVED BY MAYOR PRO TEM ANDERSON, SECONDED BY COUNCIL MEMBER HARKEY, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM 9.

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The motion carried by the following vote:

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

**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, OCTOBER 26, 2005**

RECEIVED AND FILED.

**3. PLANNING COMMISSION MEETING MINUTES, MEETING OF OCTOBER 19, 2005**

RECEIVED AND FILED.

**4. PLANNING COMMISSION ACTIONS, MEETING OF NOVEMBER 2, 2005**

RECEIVED AND FILED.

**5. YOUTH BOARD MEETING MINUTES, MEETING OF OCTOBER 6, 2005**

RECEIVED AND FILED.

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

RECEIVED AND FILED.

**7. CLAIMS AND DEMANDS**

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

**8. DISPOSITION OF NONESSENTIAL CITY RECORDS** *[STRATEGIC PLAN: ACHIEVE TOTAL EXCELLENCE IN MUNICIPAL SERVICES AND CITY ADMINISTRATION/PLANNING WITH EXCELLENT CUSTOMER SERVICE AND COST-EFFECTIVENESS]*

APPROVED THE 2005 DISPOSITION OF NONESSENTIAL CITY RECORDS IN ACCORDANCE WITH CALIFORNIA STATE LAW AND THE CITY'S APPROVED RECORDS RETENTION SCHEDULE AND ADOPTED **RESOLUTION NO. 05-11-09-01**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AUTHORIZING THE DISPOSITION OF CERTAIN

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*INACTIVE CITY RECORDS AS PROVIDED BY SECTION 34090 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.*

- 9. 2005 SALARY RANGES FOR REPRESENTED AND NON-REPRESENTED EMPLOYEE CLASSIFICATIONS** *[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 Council Member Harkey.

City Manager Chotkevys provided the staff report.

IT WAS MOVED BY COUNCIL MEMBER CHILTON, SECONDED BY MAYOR PRO TEM ANDERSON, TO:

- 1) **ADOPT RESOLUTION NO. 05-11-09-03**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT ESTABLISHING SALARY RANGES FOR REPRESENTED AND NON-REPRESENTED CLASSIFICATIONS; AND
- 2) AUTHORIZE MERIT INCREASE AND FUNDING LIMITS CONSISTENT WITH PRIOR YEARS: REPRESENTED EMPLOYEES WITH 0-5% MERIT INCREASES AND A 3.5% FUNDING LIMIT; NON-REPRESENTED EMPLOYEES WITH 0-5% MERIT INCREASES AND A 3.5% FUNDING LIMIT.

The motion carried by the following vote:

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

- 10. APPROVAL OF REVISED INVESTMENT POLICY** *[STRATEGIC PLAN: ACHIEVE TOTAL EXCELLENCE IN MUNICIPAL SERVICES AND CITY ADMINISTRATION/PLANNING WITH EXCELLENT CUSTOMER SERVICE AND COST-EFFECTIVENESS]*

APPROVED THE RECOMMENDED REVISIONS TO THE STATEMENT OF SAFEKEEPING AND INVESTMENT OF PUBLIC FUNDS (INVESTMENT POLICY).

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11. **ADOPT A RESOLUTION OF THE CITY OF DANA POINT CITY COUNCIL CERTIFYING THAT THE CITY OF DANA POINT HAS THE RESOURCES TO FUND THE PROJECTS SUBMITTED FOR INCLUSION IN THE FY 2005/2006 TO 2010/2011 REGIONAL TRANSPORTATION IMPROVEMENT PROGRAM AND AFFIRMING ITS COMMITMENT TO IMPLEMENT ALL OF THE PROJECTS SUBMITTED IN THE PROGRAM** *[STRATEGIC PLAN: MAINTAIN, MODERNIZE AND BEAUTIFY THE CITY'S INFRASTRUCTURE AND NEIGHBORHOODS]*

*ADOPTED RESOLUTION NO. 05-11-09-02, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, CERTIFYING THAT THE CITY OF DANA POINT HAS THE RESOURCES TO FUND THE PROJECTS SUBMITTED FOR INCLUSION IN THE FY 2005/2006 TO 2010/2011 REGIONAL TRANSPORTATION IMPROVEMENT PROGRAM AND AFFIRMING ITS COMMITMENT TO IMPLEMENT ALL OF THE PROJECTS SUBMITTED IN THE PROGRAM.*

**ORAL REPORTS**

There were no Oral Reports.

**PUBLIC COMMENTS**

Mayor Rayfield opened the meeting for public comments.

Judy Rice, Laguna Hills, spoke regarding tax exempt bonds for the mobile home park purchase.

Charles Huffer, Dana Point, spoke regarding his being the last resident of the mobile home park and of his agreement with Makar.

Ron Lackey, Monarch Beach, spoke regarding the AARP's development of committees and of his attempt to gather signatures at a local market for the recall of school district members.

Nancy Jenkins, Dana Point, spoke regarding the event in sponsorship of the Capistrano Valley Symphony Orchestra to be held on December 11<sup>th</sup> at the Laguna Cliffs Marriott Resort. Included will be a performance by the orchestra, a boutique and brunch. To receive more information regarding this event call 240-8584.

Dr. Jim Seitz, Dana Point, spoke regarding the displacement of veterans who were former residents of the mobile home park and Makar's plans for the property, in opposition to the destruction of documents, and regarding affordable housing needs in the City.

Linda Culver, Dana Point, spoke regarding the mobile home park closure.

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Mayor Rayfield commented that the sale of the mobile home park property had been a sale between two private individuals.

City Attorney Muñoz commented that when the Closure Impact Report for the mobile home park property came forward, Makar submitted in writing that they did not have a project in mind for the property and that decisions had not been made on its disposition. Documents submitted to the Court resulted in the Court ruling that the Closure Impact Report was proper.

Mayor Rayfield commented on a letter referred to by Dr. Seitz during his public comments, a letter not written by Makar but rather by a consultant to Makar. The letter included speculation concerning a possible project for the mobile home park site, but Mayor Rayfield noted that this was speculation by the consultant and not a statement by Makar.

Mayor Rayfield declared a recess at 6:55 p.m. and reconvened the meeting at 7:09 p.m. All Council Members were present with the exception of Council Member Lacy.

**NEW BUSINESS**

**15. CALIFORNIA BORDER POLICE INITIATIVE**

This item was taken out of order by Mayor Rayfield.

City Manager Chotkevys introduced City Attorney Muñoz, who presented the staff report.

Senator John Campbell spoke regarding the need to establish a State Police Force whose sole mission is the comprehensive enforcement of federal immigration law and whose purpose is the reduction of illegal immigration into California, diminishing the threat of terrorism and improving our economy. Senator Campbell noted that petitions currently are being circulated for signatures.

George Miller, Dana Point, expressed appreciation to Senator Campbell and Council Member Harkey for their leadership role in this initiative and urged the City Council to support the initiative.

Craig Alexander, Dana Point, President of the South Orange County Republican Assembly, a local unit of the California Republic Assembly (CRA), stated the CRA strongly endorsed this initiative and was collecting signatures. Mr. Alexander encouraged Council support of this initiative.

John Chaffetz, Dana Point, spoke in support of the initiative and urged the City Council to take a position in support of it.

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Lou Penrose, Dana Point, Congressional Aide to United States Representative Ed Royce, encouraged the City Council to support this initiative. Mr. Penrose noted that petitions could be downloaded from the website [www.calborderpolice.com](http://www.calborderpolice.com).

Council Member Lacy returned to the Council Chamber to participate in discussion of this item.

IT WAS MOVED BY MAYOR PRO TEM ANDERSON, SECONDED BY COUNCIL MEMBER CHILTON, TO DECLARE CITY COUNCIL ENDORSEMENT OF THE CALIFORNIA BORDER POLICE INITIATIVE REGARDING THE ENFORCEMENT OF FEDERAL IMMIGRATION LAW.

The motion carried by the following vote:

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

Council Member Lacy left the meeting due to illness following discussion of this item.

Mayor Rayfield declared a recess at 7:43 p.m. and reconvened the meeting at 7:52 p.m. All Council Members were present with the exception of Council Member Lacy.

## **PUBLIC HEARINGS**

There were no public hearings.

## **UNFINISHED BUSINESS**

- 12. PROFESSIONAL SERVICES AGREEMENT TO PREPARE RENEGOTIATION OR REQUEST FOR PROPOSAL DOCUMENTS FOR A NEW SOLID WASTE AND RECYCLING SERVICES FRANCHISE AGREEMENT [STRATEGIC PLAN: ACHIEVE TOTAL EXCELLENCE IN MUNICIPAL SERVICES AND CITY ADMINISTRATION/PLANNING WITH EXCELLENT CUSTOMER SERVICE AND COST-EFFECTIVENESS]**

City Manager Chotkevys provided introductory remarks.

Director of Public Works and Engineering Services Fowler introduced consultant Laith Ezzet, Senior Vice President of Hilton Farnkopf & Hopson (HFH), who provided a presentation on the background of CR&R's service in the community, compliance with AB 939 standards, and a customer survey regarding current solid waste and recycling services in the City.

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Director of Public Works and Engineering Services Fowler concluded the staff report.

Richard Gardner, Capistrano Beach, spoke regarding the current level of service and of the need for a repository for disposal of the city's household hazardous waste.

IT WAS MOVED BY COUNCIL MEMBER HARKEY, SECONDED BY MAYOR PRO TEM ANDERSON, TO:

(1) DIRECT STAFF TO RENEGOTIATE WITH CR&R, SUBJECT TO OBTAINING COMPETITIVE PRICING AND ENHANCEMENTS FOR RESIDENTIAL AND COMMERCIAL SERVICE, THE EXCEPTION BEING CONSTRUCTION AND DEMOLITION ROLL-OFF SERVICE WHICH WILL BE OPENED UP TO COMPETING HAULERS (FAILURE WILL RESULT IN COMPETITIVE RFP RECOMMENDATION);

(2) DIRECT STAFF TO REVISE AND UPDATE THE CONSTRUCTION AND DEMOLITION ORDINANCE TO PROVIDE IN ADDITION TO 75% DIVERSION, COMPETITION, COMMENSURATE FEES AND TIGHTER FACILITY QUALIFICATIONS SUCH AS: ENVIRONMENTAL CONTAMINATION INSURANCE AND NPDES COMPLIANT FACILITIES;

(3) DIRECT STAFF, HILTON FARNKOPF & HOPSON (HFH) AND THE CITY ATTORNEY TO PREPARE A NEW UPDATED FRANCHISE AGREEMENT WITH RECOMMENDED ENHANCEMENTS; AND

(4) APPROVE ADDITIONAL SERVICES FROM HFH TO PERFORM ITEM 3 OF THEIR PROPOSAL TO SUPPORT THE RENEGOTIATION EFFORT WITH CR&R.

The motion carried by the following vote:

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

**13. CITY COUNCIL POLICIES [STRATEGIC PLAN: ACHIEVE TOTAL EXCELLENCE IN MUNICIPAL SERVICES AND CITY ADMINISTRATION/PLANNING WITH EXCELLENT CUSTOMER SERVICE AND COST-EFFECTIVENESS]**

City Manager Chotkevys provided the staff report.



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Craig Alexander, Dana Point, expressed concern with Policies 204 and 219 and their effect on transparency in government, and requested that Planning Commission meetings be televised.

IT WAS MOVED BY COUNCIL MEMBER HARKEY, SECONDED BY MAYOR PRO TEM ANDERSON (for discussion) (as amended), TO APPROVE THE RECOMMENDATIONS OF THE CITY COUNCIL POLICY REVIEW TASK FORCE TO REVISE COUNCIL POLICIES WITH THE EXCEPTION OF POLICIES 204, 209, 219, 220 AND 303.

The motion carried by the following vote:

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

IT WAS MOVED BY MAYOR PRO TEM ANDERSON, SECONDED BY COUNCIL MEMBER HARKEY, TO TABLE DISCUSSION OF POLICIES 204, 209, 219, 220 AND 303 UNTIL A MEETING WHEN COUNCIL MEMBER LACY IS PRESENT FOR INCLUSION IN THE DISCUSSION.

The motion carried by the following vote:

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

**NEW BUSINESS**

**14. CALLE PALOMA CALTRANS PROPERTY BEAUTIFICATION** *[STRATEGIC PLAN: MAINTAIN, MODERNIZE AND BEAUTIFY THE CITY'S INFRASTRUCTURE AND NEIGHBORHOODS]*

City Manager Chotkevys presented the staff report.

Director of Public Works and Engineering Services Fowler provided a Power Point presentation of the current condition of the property, and of the property depicting the conceptual approval from Caltrans.

Richard Gardner, Capistrano Beach, expressed appreciation to Director of Public Works and Engineering Services Fowler for his perseverance in the beautification of this property.

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IT WAS MOVED BY COUNCIL MEMBER HARKEY, SECONDED BY COUNCIL MEMBER CHILTON, TO APPROVE A BEAUTIFICATION PLAN FOR THE CALLE PALOMA CALTRANS PROPERTY IN ACCORDANCE WITH ENCROACHMENT PERMIT REQUIREMENTS.

The motion carried by the following vote:

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

ITEM NO. 15 WAS HEARD EARLIER IN THE MEETING.

**16. STATE CONSTITUTIONAL AMENDMENT RELATING TO EMINENT DOMAIN, SCA-15 (MC CLINTOCK, FLOREZ)**

City Manager Chotkevys provided the staff report.

City Attorney Muñoz presented in-depth information regarding State Constitutional Amendment No. SCA-15 known as "The Homeowner and Property Protection Act" regarding eminent domain.

Craig Alexander, Dana Point, spoke in support of the amendment.

IT WAS MOVED BY COUNCIL MEMBER HARKEY, SECONDED BY COUNCIL MEMBER CHILTON, TO DECLARE CITY COUNCIL ENDORSEMENT OF STATE CONSTITUTIONAL AMENDMENT NO. SCA-15 KNOWN AS "THE HOMEOWNER AND PROPERTY PROTECTION ACT" REGARDING EMINENT DOMAIN.

The motion carried by the following vote:

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

**STAFF REPORTS**

City Attorney Muñoz reported on the FPPC adopted revolving door statute amendment to their regulations.

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**COUNCIL REPORTS**

Council Member Chilton had no reports.

Council Member Harkey commented on the low voter turnout, 38% of Orange County residents, in the recent election.

Council Member Harkey reported on her discussions with Orange County Supervisor Norby regarding cities with redevelopment agencies using their cash to fund cleaning up downstream water.

Council Member Harkey noted an article in the Orange County Register which states that immigration plans could include troops. In line with the border patrol discussion earlier this evening, Council Member Harkey shared this article as it is what the Federal government is considering.

Council Member Harkey wished everyone a nice Thanksgiving holiday.

Council Member Lacy was absent.

Mayor Pro Tem Anderson reported on the illegal puppy mill which had been allegedly operating in the City of Dana Point as the "Pearlies House of Pomeranians." Thirty-nine Pomeranians were seized, most in ill-health, and now have been happily adopted. The gentlemen who had been running the puppy mill pleaded "not guilty" to a sixty count complaint which includes fourteen felony counts of animal cruelty and two felony counts of tax evasion.

Mayor Rayfield spoke regarding the drilling of wells at Doheny State Beach near San Juan Creek by the Municipal Water District of Orange County last January and February to conduct water tests and samplings to assess the feasibility of a desalination plant. An additional well is planned in the surf zone or further out into the ocean to further test the water.

Mayor Rayfield reminded everyone that free mulch would be available in San Clemente this Saturday, courtesy of CR&R.

Mayor Rayfield reported there are now 887 cases of West Nile Virus reported in California. Orange County reports only 17 cases. Mayor Rayfield expressed appreciation to the Orange County Vector Control District. Avian flu is now a concern and one must be cautious when traveling to Asia or Europe or if exposed to fowl.

Mayor Rayfield reminded everyone to take a moment to remember our veterans this Friday on Veterans Day.

Mayor Rayfield wished everyone a Happy Thanksgiving.

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Mayor Rayfield noted that the next regular Council meeting would normally be on Wednesday, November 23<sup>rd</sup>. As this is the Wednesday night before Thanksgiving, the City Council will not meet that night. The next City Council meeting will be on Wednesday, November 30<sup>th</sup>.

**ADJOURNMENT**

There being no further business before the City Council at this session, Mayor Rayfield declared the meeting adjourned at 9:12 p.m.

To accommodate holiday schedules the Regular Meeting of the City Council scheduled for November 23, 2005 will not be held. The next meeting of the City Council will be November 30, 2005 at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

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CATHY CATLETT  
ASSISTANT CITY CLERK

APPROVED AT THE MEETING OF NOVEMBER 30, 2005