
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
JULY 18, 2017**

CALL TO ORDER

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

ROLL CALL OF CITY COUNCIL MEMBERS:

Debra Lewis, Mayor
Paul N Wyatt, Mayor Pro Tem
Joseph L. Muller, Council Member
John A. Tomlinson, Council Member
Richard A. Viczorek, Council Member

CLOSED SESSION

City Attorney Munoz indicated that there was a need for Closed Session as follows:

- A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Government Code § 54956.9 (d1), (1 case)

- B. CODE ENFORCEMENT UPDATE
 - 1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Gov. Code §54956.9(d)(1) (3 cases)

 - 2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, Gov. Code §54956.9(a) (6 cases):
 - i. City of DP v. Karns, Case No. 16HM10382
 - ii. City of DP v. Pickering, Case No. 16HM10192
 - iii. Volkmann v. City of DP, OC Superior Case No. 30-2017-00914962-CU-EI-CXC
 - iv. City of DP v. Seaside Inn, Case No. OCSC Case No. 30-2017-00915900
 - v. City of DP v. George R. Grant, Case No. 17HM00268

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- vi. City of DP v. David Stevens; Diane Stevens; Oakbrook Landscape & Construction, Case No. 17HM01407

C. PUBLIC EMPLOYMENT, Government Code § 54957 (b)(1): City Manager Appointment

Mayor Lewis recessed the meeting into a Closed Session at 5:04 p.m. pursuant to Government Code Section 54956 et seq.

RECONVENE CITY COUNCIL MEETING - CALL TO ORDER

Mayor Lewis reconvened the meeting at 6:00 p.m. All Council Members were present.

STAFF PRESENT: Patrick Munoz, City Attorney; Mike Killebrew, Acting City Manager; Kathy Ward, City Clerk; Mike Rose, Director of Emergency Services; Lt. Russ Chilton; Ursula Luna-Reynosa, Director of Community Development; Mark Denny, Deputy City Manager; Matthew Schneider, Planning Manager; Brian McClure, Deputy Director of Community Services and Parks; Matthew Sinacori, Deputy Director of Public Works and Engineering; Mark Sutton, Building Official; Kelly Reenders, Economic Development Manager; Jackie Littler, Executive Assistant; DyAnne Weamire, Assistant Administrative Analyst; and Bobbi Ogan, Deputy City Clerk.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Tomlinson.

INVOCATION

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

PRESENTATIONS AND PROCLAMATIONS

Presentation to Ocean Institute - Non-Profit of the Year

Mayor Lewis presented a Certificate of Recognition to Mary Lawson, Ocean Institute Vice President of External Relations in honor of the Ocean Institute being selected as Patricia Bates' Nonprofit of the Year.

Mary stated that the Ocean Institute loves the community and were grateful for the support. She announced that they would be celebrating the Ocean Institute's 40th anniversary this year.

Employee Recognition Presentation - Lauren Kehiayan

Mayor Lewis presented Lauren with a Certificate of Recognition for her service to the City.

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Proclamation to Heather Johnston, Outgoing Dana Point Chamber Executive Director
Mayor Lewis presented a Certificate of Recognition to Heather Johnston for her service to the City as the outgoing Dana Point Chamber of Commerce Executive Director.

Heather announced that this was the 70th year of the Chamber of Commerce. She stated that the City Council, County and State had been an incredible support system for her and thanked her staff and the Board of Directors. She thanked the City staff and Mike Killebrew in particular for all of his support.

Kim Tilly, Chairwoman of the Board of Directors, presented Heather with a bouquet of flowers and thanked the City and staff on behalf of the Chamber Board for their support of Heather.

Barbara Johannes, representing the Dana Point Historical Society, wished Heather the best and presented her with a Dana Point blanket to remind her of Dana Point.

CONSENT CALENDAR

Mayor Lewis removed Item 2 from the Consent Calendar.

IT WAS MOVED BY COUNCIL MEMBER TOMLINSON, SECONDED BY MAYOR PRO TEM WYATT, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM 2.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

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, JUNE 20, 2017

Mayor Lewis removed Item 2 from the Consent Calendar.

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Mayor Lewis asked the City Attorney for clarification regarding the settlement that was reported in the Council's June 6th minutes.

City Attorney Munoz replied that to better explain what occurred to lead to the discussion held at the last meeting on the minutes, he had put together a timeline of the things that had occurred. He stated that at the Council meeting of May 16 the subcommittee of the City Council made up of the Mayor and Mayor Pro Tem that were negotiating a settlement agreement on the Headlands matter had presented the status of the settlement and there was discussion which led to the Council approving the terms of the settlement. He added that the settlement agreement was approved on a 5-0 vote on May 16. He stated that it was not a final action at that time because the City was still waiting for final approval and signature by the Headlands and Mr. Edward. As a result, there was no requirement to report that evening pursuant to the Brown Act Section 54957.1 (a) (3) (B) which basically indicates that when Council approves a settlement an announcement does not have to be made if it is not a final action that evening. What the Council is required to do is if and once it becomes final then the agreement needs to be made a public record. He stated that around May 24-25 he had some email exchanges with the Mayor, she had contacted him wondering if there was going to be a report out and he had explained to her per the code section he had mentioned that there would be no report because it was not a final action at that time and all the City needed to do was make the document available on request. He added that part of the settlement agreement included a press release so the public would have been made aware and the Mayor indicated that she felt that it was important that the public hear from the Council about the settlement and not read about it in the media. She asked if staff could delay the release of the information until after the next Council meeting so an announcement could be made and that was an issue because the agreement required that once all of the signatures were in place that within a week the press release would be issued. The Mayor contacted Mr. Edward and secured an agreement from him that it would be okay for staff to wait until after the meeting on June 6th to release the press release. At the meeting of June 6 which occurred with Council Member Muller absent, there was a closed session and without revealing any confidential information, we (Council) discussed the status and after closed session Mr. Munoz announced that the Council had reached a settlement, and that the agreement would be public in the morning and that there would be a press release. He stated that at the meeting of June 20th, the minutes were presented of the June 6th meeting, the Mayor received the minutes in advance and had edited them in a way that gave the impression that the Council approved the settlement on June 6th in closed session on a 5-0 vote. He added that staff had not noticed the error and this led to the confusion because Council Member Muller was not there that evening and the vote had not occurred on June 6th in respect to the settlement and as a

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result the discussion about the validity of the minutes at the last meeting occurred.

Council Member Muller stated that this brings up the question about the minutes. He felt that the minutes were not designed to be a play-by-play of what happens in a Council meeting. He believed that they should be pure summary minutes of the actions with a link to the video of that agenda item. He stated that he had mentioned it before that the other boards he sits on have had this issue and thinks this is something the Council needs to discuss. He agreed that the vote was 5-0 and did not understand how the vote was reported in the minutes. He asked if he would need a motion for a discussion on the minutes.

City Attorney Munoz stated that it sounds like a suggestion that staff bring back a discussion item for Council to decide how they want the minutes to be prepared and what you want them look like.

Council Member Tomlinson asked how long it took to prepare these minutes.

City Clerk Ward replied that it was hard to say how many hours, but somewhere between 10-16 hours not including the review.

Mayor Lewis stated that in all fairness, this was the meeting that lasted until 1 in the morning and that the meetings are not usually that bad.

IT WAS MOVED BY COUNCIL MEMBER TOMLINSON, SECONDED BY COUNCIL MEMBER MULLER, THAT THE CITY COUNCIL APPROVE THE MINUTES.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

3. PLANNING COMMISSION MEETING MINUTES, JUNE 26, 2017

RECEIVED AND FILED.

4. PLANNING COMMISSION ACTIONS, MEETING OF JULY 10, 2017

RECEIVED AND FILED.

5. OCEAN WATER QUALITY SUBCOMMITTEE MINUTES, APRIL 25, 2017

RECEIVED AND FILED.

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6. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

7. CLAIMS AND DEMANDS

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

8. MONTHLY FINANCIAL ACTIVITY REPORT, MAY 2017

RECEIVED AND FILED THE MONTHLY FINANCIAL ACTIVITY REPORT FOR MAY 2017.

9. DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT/VISIT DANA POINT QUARTERLY REPORT FOR APRIL - JUNE 2017

RECEIVED AND FILED THE QUARTERLY REPORT.

PUBLIC COMMENTS

Sandie Iverson on behalf of Linda Stites, spoke regarding the homelessness, drug use, beggars and crime in Dana Point and Capistrano Beach that she has heard about and experienced first-hand. She stated that she does not understand why Dana Point is not being proactive on these issues. She felt that feeding of the homeless on the beaches was just encouraging and enabling them to stay in the area instead of allowing them to go to a rescue mission or government run programs where they could receive long-term help.

Madeline Letchford, Capistrano Beach, spoke regarding the transient encampment on PCH near Doheny Village which had been cleaned up and stated that it took less than 24 hours for a full set up to re-emerge. She spoke of transients and the trash they accumulate and felt that the Council needs to prioritize this issue as well as provide more enforcement.

Lauren Hannah, Irvine, invited the City Council to the 2017 Walk for Alzheimer's which was scheduled for October 14th at the Laguna Niguel Regional Park. She stated that there was no fee to register. She added that this was the only walk where 100% of the funds raised remain local. She stated that to register go to www.alzoc/walk or call 844-435-7257.

Carol Wilson, Capistrano Beach, spoke of the illegal fireworks in her neighborhood on the 4th of July and felt that it was the worse this year than it has ever been. She suggested that the City have the VIPS to do a roaming patrol, enforce hefty fines, utilize police cadets, or volunteers from Camp Pendleton. She stated that she had called on illegal fireworks in previous years, but the neighbors did not stop until they ran out.

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Lynn Smith, Capistrano Beach, spoke regarding the budget items that were discussed at the last meeting and felt that it did not serve the public to wait for hours to speak. She felt that counting on future development to solve budget issues did not seem logical.

William Green, stated that he has been homeless for a long time. He thanked the people of the City and the County for their support.

Toni Nelson, Capistrano Beach, spoke regarding the number of graffiti, transient encampments, theft, and trash complaints received by Capo Cares. She stated that she had met with groups of Doheny Village business owners last week who were concerned about the transients, litter and unsanitary conditions around their businesses. She added that there was a growing perception that the quality of life and sense of safety was being impacted in Dana Point. She reported that she had recently received the crime statistics from OCSO for the first six months of 2017 and that Dana Point was a pretty safe city according to the statistics. She reported that there was a 68% increase in residential burglaries, vandalism is up 35% and narcotics violations are 88%. She suggested the following:

1. Regular homeless task force meetings;
2. Single serve liquor ban;
3. Monitor crime at Council meetings;
4. Direct staff and Police to work with business owners in the hot spots;
5. Consider forming a public safety task force similar to San Clemente; and
6. Work with other cities, county and State Parks to find real solutions to aid homeless.

Acting City Manager Killebrew, reported that next week our Chief would be hosting a meeting with four of the pastors in the City and Susan Price, the County's Director of Care Coordination regarding homeless and homeless services in the city. He stated that Susan would be the featured presenter at the Homeless Task Force Meeting here at City Hall at 1 p.m. on Wednesday, July 26th which would be open to the public.

PUBLIC HEARINGS

10. 2017 WEED ABATEMENT/ADMINISTRATIVE CITATION PROGRAM

Acting City Manager Killebrew provided a summary of the staff report.

Director Luna-Reynosa added that there was an Administrative Citation process which is separate from the weed abatement. She stated that in the cost report there is a second group of properties listed and those are citations that the property owners have not paid so those are being levied on their property as well.

Council Member Tomlinson commented on the size of the list and thanked staff for getting people to abate their weeds.

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There being no requests to speak, Mayor Lewis opened and closed the Public Hearing.

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY COUNCIL MEMBER TOMLINSON, THAT THE CITY COUNCIL CONDUCT A HEARING ON THE WEED ABATEMENT COST REPORT AND DELINQUENT ADMINISTRATIVE CITATION FINES, THEREAFTER, ADOPT **RESOLUTION 17-07-18-01** CONFIRMING THE COST REPORT/DELINQUENT CITATION FINES AND PROVIDING FOR THE COLLECTION ON THE REGULAR TAX BILL ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, CONFIRMING THE COST OF ABATEMENT/DELINQUENT ADMINISTRATIVE CITATION FINES AND PROVIDING FOR THE COLLECTION ON THE REGULAR TAX BILL.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

ABSENT: None

UNFINISHED BUSINESS

Mayor Lewis recessed the meeting at 6:55 p.m. and reconvened the meeting at 6:58 p.m.

11. APPROVAL OF CITY MANAGER EMPLOYMENT CONTRACT

City Attorney Munoz provided a staff report. He reported that in closed session the City Council voted 3-2 to appoint Mr. Denny as City Manager with the Mayor and Mayor Pro Tem voting no. He stated that the agreement was a four year agreement with typical terms and key provisions which included a salary of \$225,000 per year.

Mayor Pro Tem Wyatt stated that the offer was made with a 3-2 vote and that he had voted for a different person for the position. He added that the Council had a number of candidates available that he felt were better candidates to make the offer to. He stated that he was concerned with the overall process but having said all that, he has worked with Mr. Denny on a number of items with very positive results and that he will do 110% possible to ensure that he is successful. He added that he did not want Mr. Denny to think that he would not be supportive now that the decision has been made.

Mayor Lewis read the following statement into the record:

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"Over the past few weeks, I have given a great deal of thought to what I would say to you tonight. Before Mr. Denny accepted the position, he and I spoke at length about what I am going to express here tonight, so he is aware of the basis for my objections and he will not be surprised or blind-sided by my comments. But in the interest of transparency, I feel an obligation to speak on the matter and explain my "no" vote for the City Manager position.

In November 2016, the City was required to hire a new City Manager as we all know. The city promised residents that it would follow a particular process to find and hire a new City Manager. The previous Council hired a national search firm, Bob Murray & Associates, and signed a contract with Bob Murray & Associates, agreeing to pay up to \$24,000 for those services. The contract is a public record so I am not saying anything out of school. The new Council being us, spent several weeks giving input and ultimately agreed to a written job description with qualifications, and that job description was published.

A statewide search was done to find candidates. The advertised deadline for the application was March 17, 2017. That deadline was published and was made known to all potential applicants. Upon receipt of the applications, the Council and the recruiter settled on a specific process to separate qualified candidates from those who would not be considered, a process to vet the candidates and a method that the Council was going to use to choose among those candidates. Unfortunately, those agreed upon rules for the hiring process were completely disregarded, even in the face of strong objection. In addition I learned from someone outside the Council that the agreed upon vetting process had been bypassed. I can share that with you since the incident was observed outside of closed session. In fact, at one meeting I became so angry with the process that I actually left the meeting and I understand that it continued for about an hour after I walked out.

It is my impression being privy to the process and the debates in Closed Session that a candidate from the outside was not likely to be hired. It is also my impression that consensus was not the goal. I firmly believe that the integrity of the process and the Council's decision making process must be trustworthy, particularly in this event because it is behind closed doors. Having told you why I voted no, I want it to be clear now that I have absolutely no reason to believe that Mr. Denny was a part of or associated with any of the actions I have described. In fact, I have been working with him now for several weeks and I find him to have been nothing but responsive, he interacts with me, I feel that he listens to me, is open to ideas and I am very optimistic about working with him. Although I objected to the way the decision was made, I do respect the process. Three people voted and that is the vote of this Council and I will respect that and I will work with each member of this Council to go forward and do the best we can for this City and I will work and do everything possible to make Mr. Denny's tenure here a success. I look forward to it being a success and I have every reason to believe that it will be. I assure you that I do intend to work very closely with Mr. Denny and do everything that I can, everything possible to make him a success. Our City has some very serious issues and for the City to succeed, Mr. Denny has to succeed and I will do everything in my power to make that happen."

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IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY COUNCIL MEMBER TOMLINSON, THAT THE CITY COUNCIL APPROVE AN EMPLOYMENT CONTRACT FOR CITY MANAGER.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

ABSENT: None

12. DOHENY VILLAGE PLAN UPDATE

Director Luna-Reynosa provided a staff report.

Mayor Pro Tem Wyatt asked what the implications of not extending the contract were.

Director Luna-Reynosa replied that if the Council does not extend the contract, the City would no longer have Opticos available to assist staff in completing the Code. She added that the City will need their services to get through the hearing process.

Mayor Pro Tem Wyatt asked if Council chose not to extend, but wanted to use their services in the future it would just be a new contract.

Director Luna-Reynosa replied that it may not be easy to re-engage Opticos in the future since they do have other clients.

Mayor Lewis asked if the contract is extended, is the Council obligating the City to do anything under the contract.

Director Luna-Reynosa replied no, that there is always the option to terminate the contract.

IT WAS MOVED BY COUNCIL MEMBER TOMLINSON, SECONDED BY COUNCIL MEMBER MULLER, THAT THE CITY COUNCIL RECEIVE AND FILE THIS REPORT.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

ABSENT: None

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IT WAS MOVED BY COUNCIL MEMBER TOMLINSON, SECONDED BY COUNCIL MEMBER VICZOREK, THAT THE CITY COUNCIL AUTHORIZE AND DIRECT THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE CONTRACT BY AND BETWEEN THE CITY AND OPTICOS DESIGN, INC. TO EXTEND THE TERM OF THE AGREEMENT TO JUNE 30, 2018 (NO ADDITIONAL FUNDS ARE BEING REQUESTED).

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

ABSENT: None

Mayor Lewis stated that instead of having a Doheny Village Update, that she would like to direct staff to combine all of the development that is going on in the City and hear that report monthly.

Mayor Lewis opened the Public Comments.

Teresa Bovee, Dana Point, stated that she was in opposition to the plans for Doheny Village. She was concerned about additional work being done and felt that the City has spent too much money with very little to show for it. She added that she would not want to pay them anymore. She felt that people did not know what was going on in Doheny Village and suggested that a meeting be held with Opticos where everyone was properly notified. She would want to allow people to ask questions instead of being told what will be happening to their property. She stated that she was in favor of cleaning up the area including more landscape and lighting.

Mayor Lewis stated that it was her understanding that any more money spent comes back to Council.

Director Luna-Reynosa replied that environmental work was being done and invoiced. She stated that there is nothing for Opticos to do at the moment.

Acting City Manager stated that when a contract is approved there is a dollar limit and any additional scope would have to be come back to Council.

Mayor Lewis stated that before any more work is done on the contract, she would want it to come back to Council.

Mayor Pro Tem Wyatt stated that he wanted to be clear that to hold a public meeting to discuss this, Opticos does not need to be a part of that meeting.

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Director Luna-Reynosa replied that staff could host a meeting.

Mayor Pro Tem Wyatt stated that he would not pay Opticos to attend. He felt that there was a lot of work to do before we get it right and if extending contract does not obligate us to do anything, he is comfortable with it. He added that he did not want to spend what money is left in the contract until it was useful to us. He felt that it was clear that staff should not ask them to do additional work without approval of the Council.

Director Luna-Reynosa replied that the contract amount was approved by Council. She stated that as an example if there is \$100,000 remaining on the contract, technically the Council had already authorized and encumbered that money. If staff needed to exceed the amount approved, we are obligated to return to Council for approval, however if there are three of you that want staff to stop spending money on the contract that would be the clearest way to understand what the desire of the Council is.

Mayor Pro Tem Wyatt stated that had he known that by extending the contract that it gave staff the authority to spend the rest of the money without returning to Council, that he would not have voted to extend the contract.

Doug Lowe, Capistrano Beach, reported that he has had his business 12 years before the City incorporated. He stated that he appreciates the City for spending money for this project but he has ideas for his property. He added that his building is 100 years old and he wants his future building to be flexible that can adapt for the future with a helicopter pad on top in case of emergency and a triage could be held there. He asked the City to delay any further expenditures to allow him to present his design.

Director Luna-Reynosa stated that the parking report that is coming forward to Council is where staff is looking for direction from Council before moving forward with any other work with Opticos. She added that if this project is to move forward there are some significant staff resources that will need to be dedicated. She reported that as of right now, the EIR is on schedule to be ready in April. She stated that if it gets to the Planning Commission and City Council for hearings, it will still need to go before the Coastal Commission and the likelihood of that Code going into effect is two to three years away. She added that property owners would have time to submit applications before the new Code goes into effect.

Maria Mancuso, Dana Point, stated that she was against the proposed Form Based Code because it does not support the industrial businesses that are currently existing. She felt that the homeless situation needs to be addressed as well as parking enforcement. She invited the Council to come and spend time with them at night to see what was going on in the area before more money was spent.

Mayor Lewis closed the Public Comments.

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Mayor Pro Tem Wyatt stated that now he understands what goes along with extending the contract. He made a motion to reconsider extending the contract. Council Member Tomlinson seconded the motion and asked what the procedure would be.

Mayor Lewis explained that according to Robert's Rules of Order, there is a motion to reconsider a vote and only a member who has voted on the winning side of the vote can make the motion. She added that there is a second and now Council can debate, and then vote on it.

Council Member Viczorek asked what the intent of the motion was.

Mayor Lewis replied that the original motion would be placed before the Council to vote on it again.

Council Member Tomlinson felt it was only fair to reconsider this motion because we did not allow public comment first.

Mayor Lewis stated that she was reconsidering because she was not sure about spending more money.

IT WAS MOVED BY MAYOR PRO TEM WYATT, SECONDED BY COUNCIL MEMBER TOMLINSON, THAT THE CITY COUNCIL RECONSIDER AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE CONTRACT BY AND BETWEEN THE CITY AND OPTICOS DESIGN, INC. TO EXTEND THE TERM OF THE AGREEMENT TO JUNE 30, 2018 (NO ADDITIONAL FUNDS ARE BEING REQUESTED).

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

ABSENT: None

Council Member Viczorek made a motion to extend the contract and Mayor Lewis seconded the motion.

Council Member Tomlinson stated that he had heard the idea before staff spends any more money it would come back to Council and he was okay with that. He added that he would like Council to have the authority to approve the expenditures.

Acting City Manager Killebrew suggested that the Council could extend the contract and staff would not move forward with additional tasks assigned to the contract without Council approval.

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Council Member Muller stated that since this is a reconsideration Council cannot reconsider it again. He asked if the motion could be amended. He felt that before any more money was spent on the contract that the request comes to Council and suggested Council Member Tomlinson make the motion.

Director Luna-Reynosa clarified that she just received confirmation and that there was only \$13,000-15,000 left on the contract.

Council Member Tomlinson stated that he would amend the motion to authorize and direct the City Manager to execute an amendment extending the term to June 30, 2018 with the provision that City Council be given the opportunity to approve the expenditures of any of the remaining on the \$13,000-\$15,000 on the contract. Mayor Pro Tem Wyatt seconded the motion.

IT WAS MOVED BY COUNCIL MEMBER TOMLINSON, SECONDED BY MAYOR PRO TEM WYATT, THAT THE CITY COUNCIL AUTHORIZE AND DIRECT THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE CONTRACT BY AND BETWEEN THE CITY AND OPTICOS DESIGN, INC. TO EXTEND THE TERM OF THE AGREEMENT TO JUNE 30, 2018 (NO ADDITIONAL FUNDS ARE BEING REQUESTED) WITH THE PROVISION THAT THE CITY COUNCIL APPROVE ANY FURTHER EXPENDITURES OF FUNDING REMAINING ON THE CONTRACT.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

ABSENT: None

13. CITY COUNCIL ATTENDANCE AT CITY COMMISSION/COMMITTEE/BOARD MEETINGS

Council Member Muller stated that the only reason he brought this up was because three of the Council had attended a Finance Review Committee meeting which was not planned and not realized until the City Attorney came out into the audience to address each of them. He added that it just made him wonder if it was an issue with the Brown Act and it was explained that it was not but the question is not can or can we not go to the meetings, but whether the Council should go. He felt that it was a perception issue with the public. He asked the City Attorney to address the policy on the Planning Commission.

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City Attorney Munoz stated that there were some concerns about what it looked like when City Council attends Planning Commission meetings which are quasi-judicial meetings and could be appealed to the City Council which raises the question about being fair and objective. He added that the other concern that they had with the Council showing up at meetings is that it gave the impression that especially if they spoke that they were representing entire Council and influencing the Planning Commission. He felt that it came down to the conduct at meetings and that the Brown Act already addresses what the rules are in terms of if Council Members attend meetings. He recommended that if you choose to attend meetings that you sit separately from each other so there is no perception and do not speak at the meeting if there is a quorum present. He stated that this policy was limited to Planning Commission.

Mayor Lewis stated that Policy 205 was specific to attendance at Planning Commission meetings. She added that Policy 220 was for the purpose of attendance at subcommittee and task force meetings and Council Members should only attend as an observer and not a participant.

City Attorney Munoz stated that he did not have that policy in front of him but that it sounds like it applies to subcommittees of the City Council and that there have been some changes in the law since that policy was adopted.

Mayor Lewis asked so in terms of attending the Finance Review Committee there was no problem attending as she does not speak at them.

City Attorney Munoz replied that there would be no problem if all of the Council attended as long as they do not participate in the meeting.

CITY COUNCIL DISCUSSED POLICY 205 REGARDING THE ATTENDANCE OF CITY COUNCIL MEMBERS AT PLANNING COMMISSION OR OTHER COMMISSION/COMMITTEE/BOARD MEETINGS AND THERE WAS NO OTHER ACTION TAKEN.

NEW BUSINESS

14. AWARD OF CONTRACT FOR THE CONSTRUCTION OF THE ANNUAL SLURRY SEAL PROJECT FY17/18

Deputy City Manager Denny provided a staff report.

There were no requests to speak on this item.

IT WAS MOVED BY MAYOR PRO TEM WYATT, SECONDED BY COUNCIL MEMBER TOMLINSON, THAT THE CITY COUNCIL APPROVE THE CONSTRUCTION CONTRACT DOCUMENTS REQUIRED FOR THE "ANNUAL SLURRY SEAL PROJECT FY 17/18".

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The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

ABSENT: None

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY MAYOR PRO TEM WYATT, THAT THE CITY COUNCIL APPROVE AWARD OF A CONTRACT TO ALL AMERICAN ASPHALT FOR CONSTRUCTION OF THE ANNUAL SLURRY SEAL PROJECT FY 17/18 AND AUTHORIZE THE CITY MANAGER OR HIS DESIGNEE TO SIGN AND ADMINISTER THE SUBJECT CONTRACT AND APPROVE ADDITIONAL PAYMENT FOR CHANGE ORDERS, CONTINGENCIES, MANAGEMENT SERVICES, SOILS AND MATERIAL TESTING, SURVEYING, AND CONSTRUCTION DESIGN SUPPORT FOR THE PROJECT.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

ABSENT: None

Council Member Tomlinson stated that this involves sampling materials for consistency and asked if we have always used an outside contract for this.

Deputy City Manager Denny replied that was correct and it was also for compaction. He stated that he could not speak to the history of this, but you would want a third party to conduct the testing.

IT WAS MOVED BY COUNCIL MEMBER TOMLINSON, SECONDED BY MAYOR PRO TEM WYATT, THAT THE CITY COUNCIL AUTHORIZE ADDITIONAL MATERIALS INSPECTION AND TESTING SERVICES PER THE AS-NEEDED CONSULTANT SERVICES AGREEMENT WITH GMU GEOTECHNICAL FOR GEOTECHNICAL ENGINEERING AND MATERIALS TESTING.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

ABSENT: None

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IT WAS MOVED BY MAYOR PRO TEM WYATT, SECONDED BY COUNCIL MEMBER TOMLINSON, THAT THE CITY COUNCIL AUTHORIZE THE FUNDING TRANSFERS.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

ABSENT: None

15. CITY COUNCIL SUMMER MEETING SCHEDULE

Mayor Lewis stated that this item came up because she has family coming in and there was question as to whether or not we would be cancelling the meeting but it was her feeling that the City Council was scheduled to meet on the 1st and 3rd Tuesdays of every month.

Council Member Muller asked if the meetings have gone dark in August because of Council or staff vacations.

Acting City Manager Killebrew replied that it was a combination of both and added that if something came up staff could call a special meeting but it was up to Council.

Council Member Muller stated that he had no problem with cancelling the first meeting and asked staff if there was anything time sensitive.

Director Luna-Reynosa replied that Dr. Willson was available for both dates in August.

Deputy City Manager Denny stated that there was also an appeal of the Planning Commission that could go on the meeting of the first possibly.

Council Member Muller stated that there should be a continuous block of time to allow people to get their vacations in. He asked what the implications were for the appeal if it was not ready by the first of August.

Director Luna-Reynosa replied that the Code does not define a timeline.

Council Member Tomlinson asked if there was a procedure if Council does not have enough business, the meetings could be cancelled.

City Attorney Munoz replied that unless Council gives that direction to staff in advance to make that determination, the Council would have to meet to make the decision. He stated that from his experience the month of August has been dark and first meeting in September has not occurred almost

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every single year that he has been City Attorney. He added that there have been times where the Council had to meet for special meetings. He felt that as Council Member Muller pointed out that this was really meant to be a time for staff and Council to plan and schedule vacations. He stated that if Council was more comfortable pushing forward, that would be your discretion. He suggested leaving it up to the City Manager to make the determination if the first meeting of August was needed.

Council Member Tomlinson stated that he likes that idea and felt that a special meeting could be called if necessary.

Council Member Viczorek stated he had already had it on his calendar that there was no meeting on the 1st. He added that he would be out of town on August 1st, but would be here for the August 15th meeting. He stated that he would also be gone the day after Labor Day.

Mayor Lewis stated that she did not want to be the person the meetings were cancelled for.

Mayor Pro Tem Wyatt stated that he thought that as a Council they had to decide not to meet and that they should vote on whether to cancel any meetings.

IT WAS MOVED BY COUNCIL MEMBER VICZOREK, SECONDED BY MAYOR LEWIS, THAT THE CITY COUNCIL CANCEL THE REGULAR CITY COUNCIL MEETINGS OF AUGUST 1, 2017 AND SEPTEMBER 5, 2017.

Council Member Tomlinson stated that he agreed that business could be pushed to the next meeting and if there is any need for a special meeting it can be called.

Council Member Muller stated that he appreciates cancelling the first meetings of both months. He asked if there was a problem with taking entire month of August off plus the first meeting of September and let the Mayor call a special meeting if needed.

Mayor Pro Tem Wyatt reminded Council Member Muller that there were items already scheduled for the August 15th meeting.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

ABSENT: None

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PUBLIC COMMENTS

There were no additional Public Comments received.

STAFF REPORTS

Acting City Manager Killebrew reported that in addition to the City's Concert in the Park on Sunday, August 6th the Emergency Expo will be held in the morning at Sea Terrace Park, and Police Services will be holding the National Night Out that evening. He stated that Community Development staff has created a website www.aboutdanapoint.com as an economic development endeavor and added that staff had some items for the Council. He recognized that it was Jackie Littler's birthday tomorrow and wished her a Happy Birthday.

City Attorney Munoz stated that they were engaged in a series of lawsuits related to sober living homes. He added that the issue they have been pursuing is they are providing counseling services or are affiliated with services that should be licensed. He reported that about a month ago there was a trial on the Capistrano by the Sea case in which the City received a favorable ruling from the court and a judgement has been submitted for a permanent injunction. He stated that the Sobertec case which involves property on Evans Pointe that through the efforts of his office they had abandoned the facility and it is now being used as a single family home and the case has been dismissed. He added that these are being counted as victories and the City has had the opportunity to simply ask people to comply with existing state laws with respect to these issues.

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Mayor Lewis directed staff to talk to the Homeless Task Force about meeting more regularly and to bring back a report to Council about the task force, on how they would meet, when they would meet, and how Mayor Pro Tem Wyatt would be involved.

Mayor Pro Tem Wyatt stated that the upcoming meeting on July 26th is open to the public and after that meeting, it will need to be determined how to have regular meetings. He felt that one of the issues was that it was a large group to try and coordinate.

Council Member Muller recognized OCFA for the work they did on the recent Double Tree fire. He thanked Mark Sutton's team for their role in keeping businesses open when they experience something like this. He stated that the Council had all been invited to the Niguel Shores Men's Club meeting to hear Darrell Issa speak. He added that there was a concern for space and recommended that no guests be brought. He added that he would turn in his list of meetings attended to the City Clerk.

Mayor Lewis reported that the 5th Marine Regiment Support Group was holding their annual car wash on Saturday, July 22nd at the Doheny Village Car Wash.

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Council Member Tomlinson congratulated Mark Denny on his appointment to City Manager and wished him well in his term. He recognized Mike Killebrew as Interim City Manager. He stated that he would turn in his list of meetings attended to the City Clerk.

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

Mayor Pro Tem Wyatt stated that he had turned in his list of meetings attended. He thanked Lt. Chilton for taking himself and Mr. Denny for the tour of a homeless facility and that he was encouraged Dana Point could get some progress made.

Mayor Lewis thanked Acting City Manager Killebrew and stated that she appreciated his work in the interim period. She stated that it was a tough job and a tough place to be. She reported that she would turn in her list of meetings attended to the City Clerk.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Lewis adjourned the meeting at 8:14 p.m. and announced that the next Regular Meeting of the City Council will be August 15, 2017, 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 AUGUST 15, 2017

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Meetings attended since June 20, 2017:

Mayor Debra Lewis

June 20	Heather Kimbley Prospective new DP business owner
June 21	Code Enforcement/Capo Cares Chief Chilton Neighborhood Watch Block Captains Meeting
June 22	Lori Donchak, Heather Hutt - Deputy Director for Senator Harris SONGS
June 28	Doheny Village Business Owners Optivest Ribbon Cutting Mike Levin
June 29	Various Mayor Office Hours
June 30	Visit Dana Point Board Meeting
July 5	Various Mayor Office Hours
July 6	Chamber Board of Directors
July 9	Concerts in the Park Welcome/5th Marine Regiment Support Group
July 10	Ritz Pointe HOA Board Meeting
July 16	Concerts in the Park Welcome

Mayor Pro Tem Paul N Wyatt

June 23	Supervisor Lisa Barlett's State of OC Luncheon
June 24	Fish for Life sendoff
June 27	Ocean Water Quality Subcommittee meeting
June 28-29	League of California Cities' Mayors and Council Members Forum
June 30	League of California Cities' Advanced Workshop on City Finances
July 11	Friendship Shelter tour
July 12	City Council Survey Workshop
July 14	Dan Pingaro, CEO Ocean Institute breakfast meeting

Council Member Joe Muller

He had no meetings to report.

Council Member John A. Tomlinson

He had no meetings to report.

Council Member Richard A. Viczorek

He had no meetings to report.