
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Anderson at 5:00 p.m. in the Dana Point City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point.

ROLL CALL

PRESENT: Lara Anderson, Mayor
Russell Chilton, Mayor Pro Tem (arrived at 5:03)
Diane L. Harkey, Council Member
James V. Lacy, Council Member
Wayne Rayfield, Council Member

STAFF PRESENT: Douglas Chotkevys, City Manager; Patrick Muñoz, City Attorney; Sharie Apodaca, Director of Administrative Services; Kathy Ward, Acting City Clerk; Kyle Butterwick, Director of Community Development; Brad Fowler, Director of Public Works/City Engineer; Matt Sinacori, City Engineer; Mark Billings, Chief of Police; Jennifer Anderson, Management Analyst, Jackie Littler, Acting Executive Secretary, and Angela Duzich, Code Enforcement Officer.

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),
(1 case) Makar: Zoning/General Plan Amendment

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

Name of Case: City of Dana Point v. Debbie Block; RW Selby & Co., Inc.; Nieves Landscape, Inc. et al.; Orange County Superior Court Case No. 06CC02906

Mayor Anderson recessed the meeting into a Closed Session at 5:01 p.m. pursuant to Government Code Section 54956 *et. seq.*

RECONVENE CITY COUNCIL MEETING

Mayor Anderson reconvened the meeting at 6:04 p.m. All Council Members were present.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

CLOSED SESSION ANNOUNCEMENT REFERENCE TO ITEM A

City Attorney Muñoz provided a Closed Session announcement on Item A. At this time, the proper zoning for the former mobile home park site is Coastal/Recreational, which is the County's previous designation. Since incorporation, the City has adopted a General Plan Amendment and Zoning Ordinance that would redesignate the property as commercial/residential. However, there has not been an amendment to the Local Coastal Program. The City has sent the Local Coastal Program Amendment to the Coastal Commission several times which have all been delayed. As Coastal/Recreational, this property cannot be used for affordable housing at this time. The City would like to bring forward the General Plan Amendment request from Makar to consider affordable housing and find out Makar's plans for this property.

PLEDGE OF ALLEGIANCE

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

INVOCATION

The Invocation was led by Pastor David Matson of Gloria Dei Lutheran Church.

PRESENTATIONS AND PROCLAMATIONS

Presentation to Scotty Smith, Volunteers In Police Services (VIPS)

Mayor Anderson presented a Certificate of Recognition to Scotty Smith, Charter Member of the City's VIPS program, honoring him for his years of service as our Neighborhood Watch Coordinator.

CONSENT CALENDAR

Council Member Harkey removed Item Nos. 2 and 13; a member of the public removed Item No. 16; and staff removed Item No. 17 from the Consent Calendar. Mayor Pro Tem Chilton recused himself due to a potential conflict of interest on Item No. 16.

IT WAS MOVED BY COUNCIL MEMBER HARKEY, SECONDED BY CHILTON, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM NOS. 2, 13, 16 AND 17.

The motion carried by the following vote:

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

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

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, APRIL 26, 2006

This item was removed from the Consent Calendar by Council Member Harkey.

IT WAS MOVED BY COUNCIL MEMBER HARKEY, SECONDED BY MAYOR PRO TEM CHILTON, TO AMEND THE MINUTES TO INCLUDE QUESTIONS PROVIDED BY COUNCIL MEMBER HARKEY WHICH WERE POSED AT THE APRIL 26, 2006 COUNCIL MEETING ON ITEM NO. 9

The motion carried by the following vote:

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

3. PLANNING COMMISSION MINUTES, MEETING OF APRIL 19, 2006

RECEIVED AND FILED.

4. PLANNING COMMISSION MINUTES, MEETING OF MAY 3, 2006

RECEIVED AND FILED.

5. PLANNING COMMISSION ACTIONS, MEETING OF MAY 3, 2006

RECEIVED AND FILED.

6. PLANNING COMMISSION ACTIONS, MEETING OF MAY 17, 2006

RECEIVED AND FILED.

7. YOUTH BOARD MINUTES, MEETING OF APRIL 20, 2006

RECEIVED AND FILED.

8. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

9. CITY TREASURER'S REPORT, MARCH 2006

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF MARCH, 2006.

10. CLAIMS AND DEMANDS

RECEIVED AND FILED THE CLAIMS AND DEMANDS

11. AWARD OF A CONTRACT TO LEHMAN CONSTRUCTION, INCORPORATED FOR THE CONSTRUCTION OF DEL OBISPO PARK RESTROOM AND CONCESSION BUILDING PROJECT AS PART OF THE GENERAL PARK REHABILITATION PROGRAM

AWARDED A CONTRACT TO LEHMAN CONSTRUCTION, INCORPORATED FOR CONSTRUCTION OF THE DEL OBISPO PARK RESTROOM AND CONCESSION BUILDING PROJECT, PROVIDED THAT THE CITY MANAGER OR HIS DESIGNEE MAY APPROVE ADDITIONAL PAYMENT NOT TO EXCEED TWELVE PERCENT OF THE CONTRACT AMOUNT FOR CHANGE ORDERS AND CONTINGENCIES; AND AUTHORIZED EXPENDITURES FOR CONSTRUCTION MANAGEMENT SERVICES, SOILS AND MATERIAL TESTING, AND CONSTRUCTION DESIGN SUPPORT FOR THE DEL OBISPO PARK RESTROOM AND CONCESSION BUILDING PROJECT AS PART OF THE GENERAL PARK REHABILITATION PROGRAM AS NOTED IN THE FISCAL IMPACT SECTION.

12. ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING SECTION 14.01.140 OF THE MUNICIPAL CODE TO ADDRESS ALLOWABLE WORK HOURS ON PUBLIC STREETS

INTRODUCED AND HELD FIRST READING OF AN ORDINANCE ENTITLED:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING SECTION 14.01.140 OF THE DANA POINT MUNICIPAL CODE.

13. CHARITABLE GRANT FUNDING APPLICATIONS

This item was removed from the Consent Calendar by Council Member Harkey.

IT WAS MOVED BY COUNCIL MEMBER HARKEY, SECONDED BY MAYOR PRO TEM CHILTON, TO APPROVE CHARITABLE GRANT FUNDING TOTALING \$13,200 TO THE FOLLOWING ORGANIZATIONS:

YMCA OF ORANGE COUNTY, BEACH CITIES BRANCH \$4,000

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

SOUTH COAST MEDICAL CENTER	\$ 700
R.H. DANA ELEMENTARY SCHOOL	\$3,000
SOROPTIMIST INTERNATIONAL OF CAPISTRANO BAY	\$3,000
PET PROJECT FOUNDATION	\$2,500

AND AMEND GRANT FUNDING TO CEASE FURTHER EXPENDITURES FROM THE REMAINING BALANCE OF \$19,400 FOR THIS FISCAL YEAR.

The motion carried by the following vote:

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

14. RESOLUTION CONCERNING THE STATUS OF THE CIRCULATION ELEMENT FOR THE CITY OF DANA POINT, CALIFORNIA

ADOPTED **RESOLUTION NO. 06-05-24-01**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, CONCERNING THE STATUS OF THE TRAFFIC CIRCULATION ELEMENT FOR THE CITY OF DANA POINT, CALIFORNIA.

15. ADDITIONAL MATERIALS TESTING AND INSPECTION SERVICES FOR THE CAPISTRANO BEACH STORM DRAIN PHASE II PROJECT

APPROVED ADDITIONAL MATERIALS TESTING AND INSPECTIONS SERVICES PER THE FISCAL IMPACT SECTION TO ASSURE THAT THE STROM DRAIN PHASE II CONTRACTOR PROVIDES QUALITY WORK, PROVIDED THAT THE DIRECTOR OF PUBLIC WORKS CAN APPROVE AN ADDITIONAL EXPENDITURE UP TO 15 PERCENT, IF NEEDED, AND AUTHORIZED AN APPROPRIATE TRANSFER OF FUNDS PER THE FISCAL IMPACT SECTION TO FUND THE NECESSARY MATERIALS TESTING AND INSPECTION SERVICES.

16. 2006-2007 LAW ENFORCEMENT SERVICES AGREEMENT

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

Mayor Pro Tem Chilton recused himself from discussion of this item due to a potential conflict of interest and left the Council Chamber.

City Manager Chotkevys presented the staff report.

Dr. Jim Seitz, Dana Point, spoke in favor of this agreement and appreciates the work of Police Services.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY COUNCIL MEMBER HARKEY, TO APPROVE THE LAW ENFORCEMENT AGREEMENT WITH THE COUNTY OF ORANGE FOR LAW ENFORCEMENT SERVICES FOR THE 2006-07 FISCAL YEAR; AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT.

The motion carried by the following vote:

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

17. CONTRACT BUDGET ADJUSTMENT TO THE ARTERIAL ROADWAY RESURFACING PROJECT, FY 04-05 – COAST HIGHWAY

Mayor Pro Tem Chilton returned to the dais.

City Manager Chotkevys removed this item from the Consent Calendar and asked that the Council modify the transfer of \$450,000 to \$350,000 from the CIP reserves.

IT WAS MOVED BY COUNCIL MEMBER HARKEY, SECONDED BY COUNCIL MEMBER RAYFIELD, TO APPROVE A BUDGET ADJUSTMENT FOR A CONSTRUCTION CONTRACT MODIFICATION TO CIP PROJECT #1185; AND APPROVE A TRANSFER OF AN AMENDED AMOUNT OF \$350,000 FROM THE CIP RESERVES; AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE CONTRACT MODIFICATION IN AN AMOUNT NOT TO EXCEED THE FOREGOING.

The motion carried by the following vote:

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

PUBLIC COMMENTS

Mayor Anderson opened the meeting for public comments.

Dr. Jim Seitz, Dana Point, spoke about a desecrated U.S. flag in the community and provided the Council with pictures. Mayor Anderson asked staff to look into this matter immediately.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

Susan Hinman, Dana Point, Director of Municipal Water District of Orange County (MWDOC), provided an update of the Desalination Feasibility Study and will report back in January 2007.

Patrick Evans, Huntington Beach, spoke in reference to Closed Session Item A of this agenda. Mayor Anderson asked City Attorney Muñoz to reiterate his announcement earlier in reference to Closed Session Item A.

Pepi Weitzman, Mission Viejo, spoke in reference affordable housing and appreciates the efforts the City is doing to improve this situation. Mayor Anderson asked Director of Community Development Butterwick to provide the County's affordable housing regulations to Ms. Weitzman and the City Council.

Linda Culver, San Clemente, spoke about the flag, affordable housing efforts by the City, and the Dana Point Mobile Park. Mayor Anderson asked staff to investigate the possibility of the former Dana Point Mobile Home Park be located on a landfill.

Judy Rice, Laguna Hills and Hemet, spoke about the development of the former Dana Point Mobile Home Park in reference to a 1986 Coastal Commission report.

PUBLIC HEARINGS

There were no Public Hearings.

UNFINISHED BUSINESS

There was no Unfinished Business.

NEW BUSINESS

18. APPROVAL OF THE RENEWED MEASURE "M" TRANSPORTATION INVESTMENT PLAN

Director of Public Works/City Engineer Fowler provided a staff report and introduced Peter Herzog, Chairman of the League Measure "M" Renewal Supercommittee and Council Member of the City of Lake Forest. Mr. Art Leahy, CEO of Orange County Transportation Authority was also in attendance.

Mr. Herzog provided a Powerpoint presentation and spoke in favor placing Measure M on the ballot on November 7, 2006.

Richard Dietmeier, Dana Point, spoke in favor of the Renewed Measure "M" Transportation Investment Plan.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY MAYOR PRO TEM CHILTON, TO ADOPT **RESOLUTION NO. 06-05-24-02**, A *RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING THE RENEWED MEASURE "M" TRANSPORTATION INVESTMENT PLAN SO IT MAY BE PLACED BEFORE THE VOTERS OF ORANGE COUNTY ON THE NOVEMBER 7, 2006 BALLOT OR AS SOON AS IS PRACTICAL THEREAFTER; AND*

AUTHORIZE THE MAYOR TO SEND A LETTER OF SUPPORT FOR MEASURE "M" TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY.

The motion carried by the following vote:

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

Mayor Anderson recessed the meeting at 7:10 p.m. and reconvened the meeting at 7:16 p.m. All Council Members were present.

19. INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 5.20 OF THE DANA POINT MUNICIPAL CODE ENTITLED "MASSAGE REGULATIONS"

City Manager introduced this item and asked Director of Community Development Butterwick to provide a staff report.

Director of Community Development Butterwick outlined the proposed modifications to this ordinance revision to:

1. Increase the amount of training from 500 to 1000 hours to for new massage professionals as well as current massage professionals (within two years); and
2. A mandatory testing program would be required.

Director of Community Development Butterwick introduced Angela Duzich, Code Enforcement Officer. Code Enforcement Officer Duzich indicated that there are 205 licensed massage professionals, 75% are massage therapists, 25% are massage practitioners. The St. Regis, Ritz-Carlton, and Laguna Cliffs Marriott employ 101 of our licensed massage professionals. There are 24 licensed massage establishments in Dana Point. The proposed ordinance would allow for two types of testing: one is a National test administered by the Therapeutic Massage and Bodywork Association or a City administered test prepared by a certified instructor.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

Dr. Eric Kittay, Dana Point, is a massage therapist and licensed Chiropractor for 17 years and works at the St. Regis Resort and Spa. Dr. Kittay believes that both properly trained individuals devoted to the healing benefit of massage and the City of Dana Point would be best served by maintaining the current number of training hours necessary to become licensed and including a testing procedure as part of the licensing process.

Jill Quam, San Juan Capistrano, Bachelor of Arts degree from U.C. Irvine and licensed in Dana Point for 22 years, spoke in opposition of going back to school because of the burden on her and her family.

Michael Hempton, San Clemente, licensed for 17 years, spoke in favor of testing, but is opposed to the burdens of continued education.

The Council Members had a number of questions/concerns with regard to this ordinance:

Mayor Anderson

1. Does not want to grandfather-in massage people who are not legitimate.
2. Identify how we can discourage unlawful people to come here for massage licenses.

Mayor Pro Tem Chilton

1. Regulations will help this issue.

Council Member Harkey

1. Concerned about needing another staff person to administer this testing.

Council Member Lacy

1. Why are we doing this ordinance revision?
2. Where is the data to support this request?
3. Identify the problem.

Council Member Rayfield

1. How big is the problem?
2. Education requirement is too onerous (20 hours/month).
3. Would like to have a discussion about improved enforcement.
4. Who selects/conducts the tests?
5. Likes work session/focus group session which includes licensed massage professionals.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY COUNCIL MEMBER HARKEY, TO CONTINUE THIS ITEM TO A FUTURE MEETING. STAFF TO PROVIDE DATA IN RESPONSE TO COUNCIL'S REQUEST FOR THEIR CONSIDERATION AT A DATE TO BE DETERMINED

The motion carried by the following vote:

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

20. CITY OF DANA POINT VISITORS CENTER

City Manager Chotkevys introduced Director of Administrative Services Apodaca, who provided a staff report on this item.

Jim Howard, Dana Point, spoke in favor of this item and feels it will be of great service to Dana Point as none of the surrounding Chambers aren't open on the weekends.

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY MAYOR PRO TEM CHILTON, TO APPROVE THE ESTABLISHMENT OF A PILOT "VISITORS CENTER" IN THE KIOSK LOCATED IN THE DANA MARINA PLAZA AT THE CORNER OF GOLDEN LANTERN AND HARBOR DRIVE AND AUTHORIZE THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE PROPERTY OWNER OF DANA MARINA PLAZA FOR THE USE OF THE KIOSK FROM MAY 27 THROUGH SEPTEMBER 4, 2006 (MEMORIAL DAY WEEKEND THROUGH LABOR DAY WEEKEND).

The motion carried by the following vote:

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

PUBLIC COMMENTS (Continued)

There were no additional Public Comments.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

STAFF REPORTS

City Manager Chotkevys asked that Director of Administrative Services Apodaca provide an update on items from previous Council meetings. Ms. Apodaca's report is as follows:

- Several special events, information on Lyme Disease, and fundraisers for the two injured ladies was timely posted on the City's website.
- At the April 27 Council meeting, Council Member Lacy requested immediate amenities for Town Center area to include summer flower pots/boxes. Staff will coordinate this effort.
- Pat Pepler requested information on affordable housing, and that information was provided to her the next day.

COUNCIL REPORTS

Council Member Harkey mentioned she received a fraudulent email, purported to be from Chase Bank, asking her to verify information through her email.

Council Member Harkey reminded everyone of the concerts provided by the Capistrano Valley Symphony at www.capovalleysymphony.com. There are five concerts this year.

Council Member Harkey expressed congratulations to Bob Moore, who was recently honored by the Dana Point Historical Society.

Council Member Harkey wanted to remind everyone to vote on June 6, 2006.

Council Member Harkey reported on the housing market slowdown and possible market adjustment in 2007 especially in regards to flexible mortgage rates.

Council Member Harkey is concerned about the negative letters to the editor in the Dana Point News and would like the D.P. News to verify this information before printing.

Council Member Rayfield reminded everyone that Monday is Memorial Day and there is a service at 10:00 a.m. at Pines Park hosted by our local VFW post and Bob Moore.

Mayor Anderson looks forward to addressing the issues of the massage ordinance.

Mayor Anderson offered congratulations to Bob Moore as the 2006 Founder of the Dana Point Historical Society and thanked him for coordinating the Memorial Day service on Monday.

As Chair of the Beta Foster Care, Mayor Anderson wanted to invite everyone to the Stars Come Out Tonight Community Service Awards Gala featuring a chocolate extravaganza honoring Assemblyman Todd Spitzer, Angels baseball player Jay Johnstone, and Curtis Visca, Principal at Moulton Elementary on Saturday, June 3, 2006, 7:00 p.m. dinner, El Niguel Country Club. More information is available on www.betaforstercare.org.

**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 24, 2006**

The next City Council meeting will be held in the Council Chambers on June 14, 2006.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Anderson declared the meeting adjourned at 8:31 p.m.

The next Regular Meeting of the City Council will be on June 14, 2006 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 JUNE 14, 2006.