
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
JANUARY 25, 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
Diane L. Harkey, Council Member (*arrived at 5:03 p.m.*)
James V. Lacy, Council Member (*arrived at 5:05 p.m.*)
Wayne Rayfield, Council Member

STAFF PRESENT: Douglas Chotkevys, City Manager; Patrick Muñoz, City Attorney; Sharie Apodaca, Director of Administrative Services; Elizabeth Ehling, City Clerk; Cathy Catlett, Assistant City Clerk; Kyle Butterwick, Director of Community Development; John Tilton, City Architect/Planning Manager; Kurth Nelson, Planning Consultant; Brad Fowler, Director of Public Works/City Engineer; Matt Sinacori, City Engineer; Mark Billings, Chief of Police; Mike Rose, Emergency and Support Services Coordinator; Jennifer Anderson, Management Analyst; 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), (1 case)
- B. CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION, Government Code § 54956.9 (c), (1 case)

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

PLEDGE OF ALLEGIANCE

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

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INVOCATION

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

PRESENTATIONS AND PROCLAMATIONS

Business of the Year

Director of Administrative Services Apodaca gave a PowerPoint presentation of Business of the Year Dana Wharf Sportfishing. Mayor Anderson introduced owners Donna Kalez and Mike Hansen and presented them with a Certificate of Recognition. Also in attendance were employees Tom White, George Clough, Corey Hall, Brian Woolley, Brett Eller, Corey Leiser, Chris Pica, Dan Johnson and Judi Briere.

CONSENT CALENDAR

Council Member Harkey removed Item 2 from the Consent Calendar.

IT WAS MOVED BY COUNCIL MEMBER LACY, SECONDED BY COUNCIL MEMBER RAYFIELD, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM 2.

The motion carried by the following vote:

AYES: Council Members Harkey, Lacy, Rayfield,
Mayor Pro Tem Chilton and Mayor Anderson
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, JANUARY 11, 2006

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

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY MAYOR PRO TEM CHILTON, TO APPROVE THE MINUTES AS AMENDED BY COUNCIL MEMBER HARKEY.

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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 MEETING MINUTES, DECEMBER 21, 2005

RECEIVED AND FILED.

4. PLANNING COMMISSION ACTIONS, MEETING OF JANUARY 18, 2006

RECEIVED AND FILED.

5. YOUTH BOARD MEETING MINUTES, MINUTES OF JANUARY 5, 2006

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. CITY TREASURER'S REPORT, DECEMBER 2005

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF DECEMBER, 2005.

9. CITY COUNCIL POLICIES

CONDUCTED A SECOND READING AND ADOPTED **ORDINANCE NO. 06-01**, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING SECTIONS 2.06.060 AND 2.06.070 OF THE MUNICIPAL CODE REGARDING THE TERMS OF BOARD AND COMMISSION MEMBERS.

10. LEGISLATIVE ADVOCACY AGREEMENT – MADDOX GOVERNMENT RELATIONS

AUTHORIZED THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH MADDOX GOVERNMENT RELATIONS FOR LEGISLATIVE SERVICES IN SACRAMENTO; AND APPROVED TRANSFER OF FUNDS FROM THE

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RESERVE FOR SERVICE ENHANCEMENT FUND FOR THE COST OF SERVICES THROUGH FISCAL YEAR 2006-07.

RECONSIDERATION OF AGENDA ITEM NO. 9

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY MAYOR PRO TEM CHILTON, TO RECONSIDER ITEM NO. 9 BY READING OF TITLE.

The motion carried by the following vote:

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

9. CITY COUNCIL POLICIES

City Clerk Ehring read the title of the ordinance.

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECOND BY COUNCIL MEMBER HARKEY, TO CONDUCT A SECOND READING AND ADOPT **ORDINANCE NO. 06-01**, *AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING SECTIONS 2.06.060 AND 2.06.070 OF THE MUNICIPAL CODE REGARDING THE TERMS OF BOARD AND COMMISSION MEMBERS.*

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.

Susan Hinman, Dana Point, representing the Municipal Water District of Orange County (MWDOC), spoke regarding the Desalination Feasibility Study, Phase II, which would begin next week at Doheny State Beach. Karl Seckel, Assistant General Manager, MWDOC, responded to Council questions.

Norm Jackes, Dana Point, commended the Council for their recent efforts to improve transparency in government.

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Pam Tappan, Capistrano Beach, spoke regarding an alleged conversation with a Council Member.

Dr. Jim Seitz, Dana Point, spoke regarding a letter sent to the City Council addressing zoning issues.

PUBLIC HEARINGS

11. REVOCATION OF THE APPROVAL OF VARIANCE V03-23 AND SITE DEVELOPMENT PERMIT SDP03-52(M) AT 34111 STREET OF THE BLUE LANTERN *(Continued from the meeting of January 11, 2006)*

Council Member Harkey and Mayor Pro Tem Chilton recused themselves from discussion of this item due to conflicts of interest and left the Council Chamber.

IT WAS MOVED BY COUNCIL MEMBER LACY, SECONDED BY COUNCIL MEMBER RAYFIELD (as amended), TO TABLE THIS INDEFINITELY, WITH THE ITEM TO BE IMMEDIATELY REVISITED IF THERE IS ANY DEVIATION IN THE PLANS SUBMITTED VERSUS WHAT WAS APPROVED BY THE COURT.

The motion carried by the following vote:

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

Council Member Harkey and Mayor Pro Tem Chilton returned to the Council Chamber upon conclusion of discussion of this item.

12. MAJOR ANTENNA USE PERMIT AUP04-01, EXCEPTIONAL CASE APPROVAL ECA04-01, AND VARIANCE V04-15

Council Member Lacy recused himself from discussion of this item due to a conflict of interest, left the dais to take a seat in the audience, and left the Council Chamber upon conclusion of his public testimony (reflected below).

Mayor Anderson opened the Public Hearing.

City Manager Chotkevys provided introductory remarks and introduced Director of Community Development Butterwick, who presented the staff report. Planning Consultant Nelson provided an overview of the project.

April O'Connor, Chairwoman, Dana Point Planning Commission, provided an explanation of the Planning Commission's decision on this project.

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Chip Prather, Fire Chief, Orange County Fire Authority, spoke in support of a fully interoperable radio system which would allow police and fire communications on a common radio frequency in the event of an emergency, and of the importance of such a system.

Mike Carona, Sheriff, Orange County Sheriff's Department (OCSD), spoke of the 800 MHz system in use in Orange County and of the importance of interoperability in communications during an emergency.

Steven Bishop, Assistant Sheriff, Orange County Sheriff's Department, provided a PowerPoint presentation of the proposed communication system and antennas.

Sheriff Carona provided closing remarks in support of the proposed antenna.

City Attorney Muñoz reported that, during the earlier Closed Session, a motion was made by Council Member Harkey, seconded by Mayor Anderson, which passed on a 4 – 0 – 1 vote with Council Member Lacy abstaining due to a conflict of interest. The motion was, in the interest of transparency in government, to release the Attorney/Client Privilege related to the memo prepared by City Attorney Munoz, thus enabling the community to view the City Attorney's analysis of the inter-governmental immunity for the proposed County-owned communications antenna. The motion was limited to this memo exclusively.

Jim Huderburg, OCSD, responded to questions from the City Council.

Susan Markey, Director of Communications, OCSD, responded to questions from the City Council.

Ray Grimes, Engineer Manager, OCSD Communications, responded to questions from the City Council.

Council Member Harkey disclosed that she had met with Wayne Quint of the Sheriff's Association and conducted a site visit to South Coast Hospital. She also had spoken with Pat Plepler.

Council Member Rayfield disclosed that he had received a briefing from the Sheriff's Department approximately one month ago. He had attended the Dana Point Civic Association meeting last week to listen to discussion regarding the antenna but did not participate in the discussion. Additionally Council Member Rayfield had visited the site at Waterford Pointe without speaking with residents at that time.

Mayor Anderson disclosed that she had visited the site at Waterford Pointe without speaking with residents at that time.

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Mayor Pro Tem Chilton disclosed he had visited the site with the General Manager of the South Coast Water District and the City Manager.

Mayor Anderson declared a recess at 7:58 p.m. and reconvened the meeting at 8:12 p.m. All Council Members were present, with the exception of Council Member Lacy who recused himself.

Jim Lacy, Dana Point, speaking as a member of the public and not as a Council Member, spoke of the issue as being a property rights issue and not just a public safety issue, and spoke in opposition to the proposed placement of the antenna.

Alan Pearlmuter, Dana Point, President of the Waterford Pointe Homeowners Association, introduced Waterford Pointe resident Helen Gavin who would be speaking on behalf of the Association.

Helen Gavin, Dana Point, representing the Waterford Pointe Homeowners Association, narrated a PowerPoint presentation summarizing reasons for denial of the Major Antenna Use Permit, Exceptional Case Approval and Variances.

Larry Gerich, Dana Point, spoke in opposition to the proposed project and questioned Mayor Pro Tem Chilton's participation in this matter.

City Attorney Muñoz stated that the Fair Political Practices Commission had determined that it was not a conflict of interest for Sheriff's Deputies and Firefighters who are on City Councils across the State to participate in a decision such as was before the City Council this evening. The legal analysis is that there is an exception to the Government Code that income from a governmental agency does not count as "income" for purposes of determining whether a material financial interest exists. The determinative factor in whether or not one may participate in a government decision is if one has a material financial interest in the decision. Since Mayor Pro Tem Chilton's salary from the Orange County Sheriff's Department does not count as income for that determination, case law makes it very clear that he may participate in this decision.

Pat Plepler, Dana Point, spoke in opposition to the proposed project.

Pat Fairbanks, Dana Point, spoke in support of the proposed project.

Ingrid McGuire, Dana Point, Vice-President, South Coast Water District Board of Directors, stated the Water District considered this to be a land use issue to be decided by the City Council and had not taken a position at this time.

Richard Dietmeier, Dana Point, spoke in support of the proposed project.

Abe Gurvin, Dana Point, spoke in opposition to the proposed project.

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Wayne Quint, Jr., Corona, Association of Orange County Deputy Sheriffs, spoke in support of the proposed project.

Dr. Helmy Guirgis, Dana Point, spoke in opposition to the proposed project.

Mary Lou Rodearmel, Dana Point, spoke in opposition to the proposed project.

Mike Shless, Dana Point, spoke in opposition to the proposed project.

Steven Bishop and Ray Grimes, OCSD, responded to questions from the City Council.

Emergency and Support Services Manager Rose, Chief of Police Billings and Director of Community Development Butterwick responded to questions from the City Council.

Mike Dunbar, General Manager, South Coast Water District, responded to questions from the City Council.

Hearing no further requests to speak, Mayor Anderson closed the Public Hearing.

Mayor Anderson declared a recess at 9:37 p.m. and reconvened the meeting at 9:49 p.m. All Council Members were present, with the exception of Council Member Lacy, who was recused.

IT WAS MOVED BY MAYOR PRO TEM CHILTON, SECONDED BY COUNCIL MEMBER RAYFIELD, TO APPROVE AND ADOPT ACTION DOCUMENT A, **RESOLUTION NO. 06-01-25-01** ENTITLED,

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING MAJOR ANTENNA USE PERMIT AUP04-01, EXCEPTIONAL CASE APPROVAL ECA04-01 AND VARIANCE V04-15 TO ALLOW LAW ENFORCEMENT AND FIRE SERVICES COMMUNICATIONS WITH THE INSTALLATION OF FIVE, NEW, NON-STEALTH 800 MHZ WHIP ANTENNAS TO BE GROUPED TOGETHER ON AN EXISTING SAN ONOFRE NUCLEAR GENERATING STATION (SONGS) SIREN, ONE 4-FOOT DIAMETER MICROWAVE DISH ON TOP OF AN EXISTING WATER TANK AND A 467 SQUARE FOOT EQUIPMENT AND EMERGENCY GENERATOR BUILDING WITH AN EMERGENCY DIESEL TANK ON A COMMUNITY FACILITIES (CF) ZONED PARCEL SURROUNDED BY THE WATERFORD POINT COMMUNITY (APN: 682-161-02); AS MODIFIED TO INCLUDE THE FOLLOWING THREE CONDITIONS OF APPROVAL:

1. APPLICANT SHALL USE THE BEST AVAILABLE TECHNOLOGY TO CONTROL EMISSION FROM THE SITE AND EQUIPMENT, INCLUDING SPECIFICALLY TO CONTROL EXHAUST AND DIESEL FUMES;

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2. INSPECTION BY THE ORANGE COUNTY FIRE AUTHORITY SHALL OCCUR AT THE SITE NOT LESS THAN TWO TIMES PER YEAR TO ENSURE THE STORAGE FACILITY FOR DIESEL FUEL MEETS ALL APPLICABLE INDUSTRY STANDARDS;
3. THE COMMUNITY DEVELOPMENT DIRECTOR SHALL HAVE THE DISCRETION TO REQUIRE NOISE MITIGATION TO ACHIEVE LEVELS BELOW THE CITY STANDARDS IF HE DEEMS TECHNOLOGY TO DO SO IS REASONABLY AVAILABLE.

The motion carried by the following vote:

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

UNFINISHED BUSINESS

There was no Unfinished Business.

NEW BUSINESS

13. COMMUNITY EMERGENCY RESPONSE TEAM

City Manager Chotkevys presented the staff report.

IT WAS MOVED BY COUNCIL MEMBER RAYFIELD, SECONDED BY COUNCIL MEMBER HARKEY, TO APPROVE THE EMERGENCY AND SUPPORT SERVICES COMMUNITY EMERGENCY RESPONSE TEAM (CERT) PROGRAM.

The motion carried by the following vote:

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

Mayor Anderson noted that Council Member Lacy had left the meeting due to illness.

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PUBLIC COMMENTS (Continued)

There were no further Public Comments.

STAFF REPORTS

There were no Staff Reports.

COUNCIL REPORTS

Council Member Harkey congratulated City Manager Chotkevys on completion of four years with the City of Dana Point. She noted the City has done well under his tutelage and expressed appreciation for his performance as City Manager and for the staff he has employed.

Council Member Harkey reported on the Historical Society's event held on Monday, January 23rd, where author Adam Collings recounted stories about California.

Council Member Harkey requested a copy of the work completed by the Residential Building Height Task Force be forwarded to the Planning Commission as soon as possible.

Council Member Rayfield congratulated City Manager Chotkevys on completion of four years with the City of Dana Point. Mr. Rayfield noted Mr. Chotkevys had attracted a wonderful staff to the City of Dana Point.

Council Member Rayfield reported that on Monday, January 23rd, the ETRPA Board had met and took official action to "hibernate" ETRPA. Only one secretary remained on staff to handle administrative items that may arise. On February 15th a celebration will be held for all volunteers and those involved in the winning battle against the El Toro airport.

Council Member Rayfield noted on Thursday, January 26th at 3 p.m. at City Hall a meeting of the Library and Sea Terrace Park Subcommittee, where the focus would be on finalizing the recommendations for the completion of Sea Terrace Park.

Council Member Rayfield commented on the Ocean Institute's "Jazz in January" event to be held this weekend as a fundraiser for the Institute and encouraged everyone to attend.

Mayor Pro Tem Chilton commended City Manager Chotkevys on completion of four years with the City of Dana Point. He noted that Mr. Chotkevys has performed a masterful job.

Mayor Pro Tem Chilton reported on the article in the Orange County Business Section commending Rutan and Tucker on their one hundred year anniversary in Orange County, which featured a photograph of our City Attorney Patrick Muñoz. Mr. Chilton expressed appreciation to Rutan and Tucker on their representation of the City of Dana Point.

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Mayor Anderson congratulated City Manager Chotkevys on completion of four years with the City of Dana Point. She expressed appreciation to Mr. Chotkevys for his tenure.

Mayor Anderson congratulated Carlos Olvera on his appointment as President of the Dana Point/Capistrano Beach Historical Society as well as the new Board Members that were elected on January 23rd.

Mayor Anderson reported the Foothill/South toll road extension hearing vote was delayed at the request of State agencies to allow more time to resolve certain issues. The new hearing will be held at the Transportation Corridor offices in Irvine at 9:30 a.m. on February 23rd.

Mayor Anderson reminded everyone of the upcoming 2006 Festival of Whales to be held on March 4, 5, 11 and 12. The theme of the parade this year is "Sea Life Celebration" and will be held on March 4th at 10 a.m., with Reverend Paul Peck as the Grand Marshall. To obtain information regarding the Festival and the parade, visit the website at www.festivalofwhales.org.

Council Member Harkey reported that the Foothill/South toll road extension vote had been delayed as a result of people gathering outside the Governor's office in Sacramento to petition for more choices.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Anderson declared the meeting adjourned at 10:40 p.m.

The next Regular Meeting of the City Council will be February 8, 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 FEBRUARY 8, 2006