

CITY OF DANA POINT

**CITY COUNCIL
REGULAR
MEETING**



**TUESDAY
OCTOBER 6, 2020
5:00 P.M.**

MINUTES

Location: City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point, California 92629

Next City Council Ordinance No. 20-03

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Richard A. Viczorek at 5:00 p.m. in the City Council Chambers, 33282 Golden Lantern, Dana Point.

ROLL CALL OF CITY COUNCIL MEMBERS:

Richard A. Viczorek, Mayor
Jamey M. Federico, Mayor Pro Tem
Joseph L. Muller, Council Member
Paul N Wyatt, Council Member

CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Government Code § 54956.9 (d)(2), (1 case)
- B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION, Government Code § 54956.9 (d)(1), (2 cases)

Name of Case: City of DP v. Sunshine Group LLC (Seaside Inn), Orange County Superior Court Case No. 30-2017- 00915900

Name of Case: City of Dana Point v. Changes & Recovery, Inc., Shirley K. Zulauf, Case No. 30-2019-01059862

Mayor Richard A. Viczorek recessed the meeting into a Closed Session at 5:01 p.m. pursuant to Government Code Section 54957.

RECESS OF CITY COUNCIL MEETING UNTIL 6:00 P.M.

RECONVENE CITY COUNCIL MEETING

Mayor Richard A. Viczorek reconvened the meeting at 6:02 p.m. All Council Members were present.

STAFF PRESENT: Kelly Reenders, Assistant City Manager; Patrick Munoz, City Attorney; Kathy Ward, City Clerk; Brenda Wisneski, Community Development Director; Matt Sinacori, Public Works Director and City Engineer; Lt. Kirsten Monteleone, Jaimie To, Management Analyst; and Shayna Sharke, Deputy City Clerk.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Paul N Wyatt.

INVOCATION

There was no Invocation.

PRESENTATIONS AND PROCLAMATIONS

OCFA Fire Prevention Week Proclamation

Mayor Richard A. Viczorek read a proclamation announcing October 4, 2020 to October 10, 2020 as OCFA Fire Prevention Week and presented Council Member Joseph L. Muller, OCFA Representative, with the Proclamation. Council Member Joseph L. Muller urged residents to be aware and use caution when cooking in the kitchen with fire.

READING OF ORDINANCE TITLES

Mayor Richard A. Viczorek announced that staff is pulling Item 13 from the Agenda.

City Clerk Kathy Ward read one (1) ordinance title.

CONSENT CALENDAR

IT WAS MOVED BY MAYOR RICHARD A. VICZOREK, SECONDED BY COUNCIL MEMBER PAUL N WYATT, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS ON THE CONSENT CALENDAR.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member Paul N Wyatt, Mayor Pro Tem Jamey M Federico, and Mayor Richard A. Viczorek

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 AND THAT FURTHER READING OF SUCH ORDINANCES BE WAIVED.
2. **REGULAR MEETING MINUTES, SEPTEMBER 15, 2020**
APPROVED THE MEETING MINUTES.
3. **PLANNING COMMISSION MEETING MINUTES, AUGUST 24, 2020**
RECEIVED AND FILED.
4. **PLANNING COMMISSION MEETING MINUTES, SEPTEMBER 14, 2020**
RECEIVED AND FILED.
5. **ARTS & CULTURE COMMISSION MEETING MINUTES, JUNE 10, 2020**
RECEIVED AND FILED.
6. **MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR**
RECEIVED AND FILED.
7. **CITY TREASURER'S REPORT, AUGUST 2020**
RECEIVED AND FILED THE CITY TREASURER'S REPORT, AUGUST 2020.
8. **CLAIMS AND DEMANDS**
RECEIVED AND FILED.
9. **AWARD OF CONTRACT FOR THE CONSTRUCTION OF THE ANNUAL RESIDENTIAL ROADWAY RESURFACING PROJECT FY 19/20**
 - 1) DECLARED THE BID SUBMITTED BY ONYX PAVING COMPANY NON-RESPONSIVE DUE TO FAILURE TO LIST THE REQUIRED SUBCONTRACTOR FOR THE LANDSCAPE/IRRIGATION RESTORATION PORTIONS OF THE ANNUAL RESIDENTIAL ROADWAY RESURFACING PROJECT FY 19/20 (PROJECT) AS OUTLINED IN THE CONTRACT DOCUMENTS, AS WELL AS NOT LISTING THE PROPER PREQUALIFIED SUBCONTRACTOR FOR WORK ASSOCIATED WITH THE SOUTH COAST WATER DISTRICT'S (SCWD) FACILITIES.
 - 2) ACKNOWLEDGED THAT THE INADVERTENT CLERICAL ERROR RELATIVE TO THE MOBILIZATION/DEMobilIZATION BID AMOUNTS FOR BID SCHEDULES A, B AND D OUTLINED IN THE LETTER SUBMITTED BY NOBEST INCORPORATED, INCLUDED AS

SUPPORTING DOCUMENT B, HAS NOT SUBSTANTIALLY ALTERED THE BID SUBMITTED, INCLUDING THE TOTAL PROJECT AMOUNT, AND NO RELIEF IS WARRANTED.

3) APPROVED THE AWARD OF A CONTRACT (ACTION DOCUMENT A) TO NOBEST, INC. FOR CONSTRUCTION OF THE ANNUAL ROADWAY RESURFACING PROJECT FY 19/20 AND AUTHORIZED THE CITY MANAGER OR HIS DESIGNEE TO SIGN AND ADMINISTER THE SUBJECT CONTRACT AND APPROVE ADDITIONAL PAYMENT FOR CHANGE ORDERS AND CONTINGENCIES.

4) AUTHORIZED THE EXPENDITURE AS NOTED IN THE FISCAL IMPACT SECTION WITH GMU GEOTECHNICAL FOR MATERIALS TESTING AND QUALITY ASSURANCE PER THE EXISTING AS-NEEDED CONSULTANT SERVICES AGREEMENT WITH GMU GEOTECHNICAL.

5) AUTHORIZED THE CITY MANAGER TO PROCESS A STANDARD CONSULTANT SERVICES AGREEMENT WITH WESTLAND GROUP, INCORPORATED, FOR SURVEYING, CONSTRUCTION STAKING AND MONUMENT PRESERVATION FOR THE PROJECT AND THE ASSOCIATED EXPENDITURE.

6) AUTHORIZED THE FUNDING TRANSFERS FOR FUND #12 AND FOR CIP #1317.

10. CDBG CARES ACT CONTRACT

APPROVED THE CONTRACT FOR THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT COMMUNITY DEVELOPMENT BLOCK GRANT FOR EMERGENCY OPERATIONS CENTER IMPROVEMENTS AND MEALS ON WHEELS PROGRAM WITH THE COUNTY OF ORANGE, CALIFORNIA.

11. ADOPTION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA APPROVING THE SUBMITTAL OF AN IMPROVEMENT PROJECT, IN CONJUNCTION WITH OTHER AGENCIES, TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY (OCTA) FOR FUNDING UNDER THE COMPETITIVE MEASURE M2 REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROGRAM

1) ADOPTED RESOLUTION 20-10-06-XX ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA APPROVING THE SUBMITTAL OF AN IMPROVEMENT PROJECT, IN CONJUNCTION WITH OTHER AGENCIES, TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY FOR FUNDING UNDER THE COMPETITIVE MEASURE M2 REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROGRAM; AND

2) AUTHORIZE THE MAYOR TO SIGN THE RESOLUTION ON BEHALF OF THE CITY.

12. RATIFY THE SECOND AMENDMENT CONTRACT RENEWAL BETWEEN ALL CITY MANAGEMENT SERVICES, INC. AND THE CITY OF DANA POINT FOR PROVIDING SCHOOL CROSSING GUARD SERVICES

RATIFIED THE CITY MANAGER'S APPROVAL OF THE SECOND AMENDMENT TO THE CONTRACT AGREEMENT BETWEEN ALL CITY MANAGEMENT SERVICES, INC. AND THE CITY OF DANA POINT FOR PROVIDING SCHOOL CROSSING GUARD SERVICES FOR FISCAL YEAR 2020-2021.

PUBLIC COMMENTS

Deputy City Clerk Shayna Sharke read thirteen (13) public comments received via email.

Steve Didier (Dana Point) wrote regarding concerns of Short Term Rentals and the California Coastal Commission's authority and guidelines.

Toni Nelson (Dana Point) wrote regarding concerns of Short Term Rentals and lack of public participation in the decision making process.

Barbara Wilson (Dana Point) wrote regarding concerns of Short Term Rentals, enforcement, and California Coastal Commission policy.

Sande Iverson (Dana Point) wrote regarding concerns of Short Term Rentals, housing shortage, support for local hotels, and respecting residential neighborhoods.

Alan Bell (Dana Point) wrote regarding concerns of Short Term Rentals and requested that they're kept out of residential neighborhoods.

Paula Page (Dana Point) wrote regarding concerns of Short Term Rentals and referenced her experience as a Realtor citing negative reactions from clients when Short Term Rentals are in a neighborhood.

Jill Fabricant (Dana Point) wrote in support of Short Term Rentals if the owners of the units live on the premises.

Betty Hill (Dana Point) wrote regarding the California Coastal Commission's position on Short Term Rentals and urged the City Council to include residents in the decision making process.

Rick & Cindy Fleming (Dana Point) wrote regarding their positive experiences in Short Term Rentals when the owners are present on the property and against absentee ownership.

John & Margie Faulkner (Dana Point) wrote stating their opposition of Short Term Rentals and asked that the decision be put to a vote of the people.

Mark McGinn (Dana Point) wrote in opposition to Short Term Rentals and asked that the decision be put to a vote of the people.

Annette Szlachta-McGinn (Dana Point) wrote in opposition to Short Term Rentals and asked that the decision be put to a vote of the people.

Carol Kelly (Dana Point) wrote in opposition of expanding Short Term Rentals.

City Clerk Kathy Ward read six (6) public comments received via email.

Michelle Schumacher wrote thanking Council Member Joseph L. Muller for his research into issues within the TCA agency and her concerns with their misuse of tax payer money.

Mark Bowman wrote in opposition of Proposition 16.

Sue wrote in opposition of Proposition 16.

Weijie Huang wrote in opposition of Proposition 16.

Bethany Hernandez wrote in opposition of Proposition 16.

Peggy Lu (Dana Point) wrote in opposition of Proposition 16.

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Council Member Paul N Wyatt stated that he has turned in his list of meetings attended to the City Clerk.

Council Member Joseph L. Muller stated that he has turned in his list of meetings attended to the City Clerk.

Mayor Pro Tem Jamey M. Federico stated that he has turned in his list of meetings attended to the City Clerk. He addressed the comments regarding Short Term Rentals, stating that direction was given to staff to include stronger enforcement and limited outside investor ownership and clarified his intention of a collaborative process and his position on Short Term Rentals.

Mayor Richard A. Viczorek stated that he will turn in his list of meetings attended to the City Clerk.

PUBLIC HEARINGS

13. LOCAL COASTAL PROGRAM AMENDMENT LCPA19-0002/ZONE TEXT AMENDMENT ZTA19-0002 RELATED TO ACCESSORY DWELLING UNITS, JOINT USE OF PARKING FACILITIES, AND PUBLIC NOTIFICATION

Staff pulled this item from the Agenda.

14. AMENDMENT OF DANA POINT MUNICIPAL CODE CHAPTER 5.20 MASSAGE BUSINESS REGULATIONS

Community Development Director Brenda Wisneski provided a staff report.

Discussion ensued.

Mayor Richard A. Viczorek opened the Public Hearing at 6:50 p.m.

There was no public comment.

Mayor Richard A. Viczorek closed the Public Hearing at 6:50 p.m.

Mayor Richard A. Viczorek separated the recommended actions to be voted on individually.

IT WAS MOVED BY MAYOR RICHARD A. VICZOREK SECONDED BY COUNCIL MEMBER JOSEPH L. MULLER THAT THE CITY COUNCIL HOLD A SECOND READING AND ADOPT **ORDINANCE 20-03** ENTITLED:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 5.20 OF THE DANA POINT MUNICIPAL CODE; and

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member Paul N Wyatt, Mayor Pro Tem Jamey M. Federico, and Mayor Richard A. Viczorek

NOES: None

ABSENT: None

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY MAYOR RICHARD A. VICZOREK TO DELAY THE FEE FOR 1 YEAR AND THEN WAIVE IF THE OPERATORS PROVE TO BE LEGITIMATE.

Discussion ensued.

MAYOR RICHARD A. VICZOREK MADE A SUBSTITUTE MOTION TO NOT PASS THE FEE RESOLUTION AT THIS TIME, BUT REVISIT IT NEXT YEAR.

Discussion ensued.

MAYOR RICHARD A. VICZOREK WITHDREW HIS SUBSTITUTE MOTION.

Discussion ensued.

MAYOR RICHARD A. VICZOREK MADE A SUBSTITUTE MOTION, SECONDED BY COUNCIL MEMBER PAUL N WYATT THAT THE CITY COUNCIL:

ADOPT RESOLUTION 20-10-06-02 ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A FEE SCHEDULE FOR THE LICENSING OF MASSAGE ESTABLISHMENTS

WITH AMENDED LANGUAGE STATING THAT A FEE IS HEREBY ESTABLISHED FOR MASSAGE ESTABLISHMENT PERMITS, INCLUDING APPLICATIONS FOR PERMIT RENEWALS, IN THE FOLLOWING AMOUNT: \$0.00.

Discussion ensued.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Mayor Pro Tem Jamey M. Federico, and Mayor Richard A. Viczorek

NOES: Council Member Paul N Wyatt

ABSENT: None

UNFINISHED BUSINESS

There were no Unfinished Business items.

NEW BUSINESS

15. STATUE COMMISSION FOR WATERMAN'S PLAZA – JOYCE HOFFMAN

Assistant City Manager Kelly Reenders provided a staff report.

IT WAS MOVED BY MAYOR RICHARD A. VICZOREK, SECONDED BY COUNCIL MEMBER JOSEPH L. MULLER, THAT THE CITY COUNCIL AUTHORIZE THE USE OF THE ARTS IN PUBLIC PLACES FUNDS TO COMMISSION A STATUE OF JOYCE HOFFMAN TO BE INSTALLED AT WATERMAN'S PLAZA; AND, APPROVE THE BUDGET ADJUSTMENTS, AND AUTHORIZE THE CITY MANAGER TO EXECUTE A CONTRACT WITH ARTIST BILL LIMEBROOK.

City Clerk Kathy Ward read two (2) emailed Public Comments.

Janine Raub (Chair, Arts and Culture Commission) wrote in favor of the installment of the Joyce Hoffman statue.

Joyce Hoffman thanked the City Council for their consideration for the installment of the statue in her honor.

Discussion ensued.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member Paul N Wyatt, Mayor Pro Tem Jamey M. Federico, and Mayor Richard A. Viczorek

NOES: None

ABSENT: None

STAFF REPORTS

Assistant City Manager Kelly Reenders announced that the Recreation Division hosted a successful socially distanced senior luncheon and thanked them for their efforts. She also announced a porch decorating contest, pet costume contest, pumpkin carving contest, movie night, and Spooky Treat Trolley. She added that Turkey Trot registration is open.

City Attorney Patrick Munoz stated that he had nothing to report.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Richard A. Viczorek adjourned the meeting at 7:09 p.m. He announced that the next Regular Meeting of the City Council will be October 20, 2020, 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 NOVEMBER 17, 2020.

Meetings attended since September 16, 2020:

Mayor Richard A. Viczorek

09/17/2020 OCMVCD Board of Trustees Meeting
09/28/2020 OCMVCD PR Committee Meeting

Mayor Pro Tem Jamey M. Federico

09/16/2020 OCHFT Board Meeting
09/16/2020 ACC-OC Board Meeting

Council Member Joseph L. Muller

09/21/2020 5th Marine Golf Tournament
09/23/2020 TCA
09/23/2020 OCTA
09/24/2020 OCFA
09/28/2020 OCTA
10/01/2020 OC Parks
10/05/2020 OCTA

Council Member Paul N Wyatt

09/22/2020 Be Well OC Digital Platform Advisory Group Meeting
10/01/2020 Be Well OC Homeless System Mapping Meeting
10/06/2020 Be Well OC Digital Platform Advisory Group Meeting