

# CITY OF DANA POINT

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## CITY COUNCIL REGULAR MEETING



TUESDAY  
DECEMBER 7, 2021  
5:00 P.M.

## MINUTES

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

Next City Council Ordinance No. 21-09

### CALL TO ORDER

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

### ROLL CALL OF CITY COUNCIL MEMBERS:

Jamey M. Federico, Mayor  
Joseph L. Muller, Mayor Pro Tem  
Mike Frost, Council Member  
Richard A. Viczorek, Council Member  
Michael Villar, Council Member (ABSENT)

### CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Government Code § 54956.9 (d)(2), (3 cases)
- B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION, Government Code § 54956.9 (d)(1), (1 case)  
  
Name of Case: *In re National Prescription Opiate Litigation*, No. 1:17-md-02804 (N.D. Ohio)
- C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION, Government Code § 54957  
  
Title: City Manager
- D. CONFERENCE WITH LEGAL COUNSEL - LITIGATION STRATEGY REVIEW INCLUDING POTENTIAL DISCUSSION OF THE FOLLOWING EXISTING LITIGATION, Government Code § 54956.9 (d)(1), (4 cases)
  - a. City of DP v. Sunshine Group LLC (Seaside Inn), Orange County Superior Court Case No. 30-2017- 00915900

- b. Concerned Residents of Dana Point vs. City of Dana Point Case No. 2019-01117892-CU-TT-CXC
- c. Susan A. Aguirre, Trustee Of The Aguirre Family Trust Dated December 29, 1993 v. City of Dana Point, Orange County Superior Court Case No: 30-2021-01217610 CU-WM-CJC
- d. Center For Natural Lands Management v City of Dana Point, Orange County Superior Court Case No: 30-2021-01219668 CU-OR-CJC

Mayor Jamey M. Federico recessed the meeting into a Closed Session at 5:03 p.m. pursuant to Government Code Section 54957.

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

## **RECONVENE CITY COUNCIL MEETING**

Mayor Jamey M. Federico reconvened the meeting at 6:01 p.m. All Council Members were present with the exception of Council Member Michael Villar.

STAFF PRESENT: Michael A. Killebrew, City Manager; Kelly Reenders, Assistant City Manager; Patrick Munoz, City Attorney; Shayna Sharke, City Clerk; Administrative Sergeant Isaac Felter; Brenda Wisneski, Community Development Director; Matthew Sinacori, Public Works Director and City Engineer; James Shadle, General Services Director; Belinda Deines, Principal Planner; and Jaimie To, Management Analyst.

## **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Council Member Mike Frost.

## **INVOCATION**

There was no Invocation.

## **PRESENTATIONS AND PROCLAMATIONS**

### Business of the Quarter

Mayor Jamey M. Federico presented a Certificate of Recognition to Jason Spates of Doheny Bike and his son and announced a "Helmet Giveaway" on December 18<sup>th</sup>, 2021.

## **READING OF ORDINANCE TITLES**

There were no Ordinance Titles.

## **CONSENT CALENDAR**

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IT WAS MOVED BY MAYOR JAMEY M. FEDERICO, SECONDED BY COUNCIL MEMBER MIKE FROST, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS ON THE CONSENT CALENDAR.

The motion carried by the following vote:

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

NOES: None

ABSENT: Council Member Michael Villar

**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, NOVEMBER 16, 2021**

APPROVED THE MEETING MINUTES.

**3. PLANNING COMMISSION MEETING MINUTES, OCTOBER 25, 2021**

RECEIVED AND FILED.

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

RECEIVED AND FILED.

**5. CLAIMS AND DEMANDS**

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

**6. ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2021**

RECEIVED AND FILED THE ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2021.

**7. POLICE SERVICES REPORT**

RECEIVED AND FILED THE POLICE SERVICES REPORT.

**8. 2022 CITY COUNCIL MEETING SCHEDULE**

APPROVED THE 2022 CITY COUNCIL MEETING SCHEDULE.

**9. AWARD OF A CONTRACT FOR THE CONSTRUCTION OF THE ANNUAL RESIDENTIAL ROADWAY RESURFACING PROJECT FY 20/21**

- 1) DECLARED THE BID SUBMITTED BY LC PAVING, INCORPORATED AS NON-RESPONSIVE DUE TO FAILURE TO LIST THE REQUIRED PREQUALIFIED SUBCONTRACTOR FOR UTILITY WORK AS OUTLINED IN THE ANNUAL RESIDENTIAL ROADWAY RESURFACING PROJECT FY 20/21 CONTRACT DOCUMENTS.
- 2) APPROVED THE AWARD OF A CONTRACT TO ONYX PAVING COMPANY, INC. FOR CONSTRUCTION OF THE ANNUAL ROADWAY RESURFACING PROJECT FY 20/21 AND AUTHORIZED THE CITY MANAGER OR HIS DESIGNEE TO SIGN AND ADMINISTER THE SUBJECT CONTRACT AND APPROVED ADDITIONAL PAYMENT FOR CHANGE ORDERS AND CONTINGENCIES.
- 3) AUTHORIZED THE EXPENDITURE AS NOTED IN THE FISCAL IMPACT SECTION WITH GMU GEOTECHNICAL, INC. FOR MATERIALS TESTING AND QUALITY ASSURANCE PER THE EXISTING AS-NEEDED CONSULTANT SERVICES AGREEMENT WITH GMU GEOTECHNICAL.
- 4) 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 AS NOTED IN THE FISCAL IMPACT SECTION.
- 5) AUTHORIZED THE FUNDING ALLOCATION, TRANSFERS AND EXPENDITURES OUTLINED IN THE FISCAL IMPACT SECTION.

**10. AUTHORIZE THE PURCHASE OF A POLICE MOTORCYCLE**

AUTHORIZED THE PURCHASE OF A POLICE MOTORCYCLE USING FUNDING AS OUTLINED IN THE FISCAL IMPACT SECTION.

**PUBLIC COMMENTS**

Wayne Yost (Dana Point / VFW Post 9934) commended Mayor Federico for his strong leadership over the past year.

Dana Yarger (Dana Point) wished the community happy holidays and shared that the Elephant Parade exhibition has been extended. He provided a handout to Council regarding the mastodon discovered in Capistrano Beach in 1929. He expressed hope that the City will continue the elephants' legacy by increasing the number of permanent installations around town.

Donna Molina (Dana Point) spoke regarding a large, loud wedding at Project Social and the issues she faced when calling the non-emergency and code enforcement lines, as well as 911, regarding her related noise complaints.

Mayor Federico directed Staff to contact Donna Molina regarding the noise incident.

Vickie McMurchie (Dana Point / Chamber of Commerce) thanked Mayor Federico for volunteering over the past year and his support of the Chamber of Commerce and community.

## **PUBLIC HEARINGS**

### **11. APPEAL OF THE PLANNING COMMISSION'S DECISION TO DENY THE APPEAL AND UPHOLD THE COMMUNITY DEVELOPMENT DIRECTOR'S APPROVAL OF MINOR SITE DEVELOPMENT PERMIT SDP21-0009(M) TO CONSTRUCT AN ADDITION GREATER THAN 10 PERCENT TO A NONCONFORMING STRUCTURE AT 34732 CALLE FORTUNA (CONTINUED FROM NOVEMBER 2, 2021 MEETING)**

Principal Planner Belinda Deines provided a Staff Report.

Mayor Jamey M. Federico re-opened the Public Hearing at 6:23 p.m.

Gerald Egner (Appellant) stated that the Applicant and Architect didn't intend to resolve the issue and reminded Council of key points in his previous testimony given at the November 2, 2021 meeting. He stated that the project does not positively contribute to the neighborhood and negatively impacts his home. He questioned future projects and how Council would respond to future development.

Jeremy Culp (Homeowner) confirmed that he met again with the Appellant. He reiterated that the plans meet the needs of his family and compared them to other homes in the neighborhood. He expressed confusion as to why he was before Council and detailed the time and money he has spent on the appeal process.

Michele Casler (Capistrano Beach) stated she lives across the street from the Appellant and built an ADU above her parent's garage in 2020. She spoke about previous incidents with the Appellant opposing her project and speaking to other neighbors against it. She spoke in favor of the Applicant and his project.

Mayor Jamey M. Federico closed the Public Hearing at 6:37 p.m.

Discussion ensued.

IT WAS MOVED BY COUNCIL MEMBER MIKE FROST, SECONDED BY MAYOR JAMEY M. FEDERICO, THAT THE CITY COUNCIL ADOPT **RESOLUTION 21-12-07-01** DENYING THE APPEAL AND SUSTAINING THE PLANNING COMMISSION'S DECISION TO UPHOLD THE COMMUNITY DEVELOPMENT DIRECTOR'S APPROVAL OF MINOR SITE DEVELOPMENT PERMIT SDP21-0009(M) TO CONSTRUCT A 739 SQUARE-FOOT LIVING AREA ADDITION TO A NONCONFORMING SINGLE-FAMILY DWELLING ENTITLED:

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DENYING THE APPEAL AND SUSTAINING THE PLANNING COMMISSION'S DECISION TO UPHOLD THE COMMUNITY DEVELOPMENT DIRECTOR'S APPROVAL OF SITE DEVELOPMENT PERMIT SDP21-0009(M) TO CONSTRUCT A 739 SQUARE-FOOT LIVING AREA ADDITION TO A NONCONFORMING SINGLE-FAMILY DWELLING IN THE RESIDENTIAL SINGLE FAMILY 7 (RSF 7) ZONING DISTRICT LOCATED AT 34732 CALLE FORTUNA**

Discussion ensued

The motion carried by the following vote:

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

NOES: None

ABSENT: Council Member Michael Villar

## **UNFINISHED BUSINESS**

There was no Unfinished Business.

## **NEW BUSINESS**

### **12. DOHENY VILLAGE PUBLIC ART MURAL**

Mayor Jamey M. Federico recused himself at 6:55 p.m.

Assistant City Manager Kelly Reenders provided a Staff Report.

Mayor Pro Tem Joseph L. Muller opened Public Comment and referenced Ashley Keene's letter received by Council prior to the meeting.

Nancy Jenkins (Dana Point / Arts & Culture Committee) spoke on behalf of the Arts & Culture Committee's Ad Hock Subcommittee. She stated that work on the mural has spanned the last two-and-a-half years and spoke in support of the project, as it reflects Capistrano Beach and the City's surfing heritage.

IT WAS MOVED BY COUNCIL MEMBER RICHARD A. VICZOREK, SECONDED BY COUNCIL MEMBER MIKE FROST, THAT THE CITY COUNCIL AUTHORIZE THE INSTALLATION OF A MURAL ON PRIVATE PROPERTY AT 34281 DOHENY PARK ROAD; AND APPROVE THE BUDGET ADJUSTMENTS LISTED IN THE FISCAL IMPACT SECTION.

Discussion ensued.

The motion carried by the following vote:

AYES: Council Member Mike Frost, Council Member Richard A. Viczorek, and Mayor Pro Tem Joseph L. Muller

RECUSED: Mayor Jamey M. Federico

NOES: None

ABSENT: Council Member Michael Villar

Mayor Jamey M. Federico reentered Council Chambers at 7:01 p.m.

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## **CITY COUNCIL REORGANIZATION**

### **A. COUNCIL REORGANIZATION**

Mayor Jamey M. Federico opened nominations for the positions of Mayor and Mayor Pro Tem.

MAYOR JAMEY M. FEDERICO NOMINATED MAYOR PRO TEM JOSEPH L. MULLER TO SERVE AS MAYOR. THE NOMINATION WAS SECONDED BY COUNCIL MEMBER MIKE FROST.

The nomination for Joseph L. Muller carried by the following vote:

AYES: Council Member Mike Frost, Council Member Richard A. Viczorek, Council Member Joseph L. Muller, and Council Member Jamey M. Federico

NOES: None

ABSENT: Council Member Michael Villar

MAYOR JAMEY M. FEDERICO NOMINATED COUNCIL MEMBER MIKE FROST TO SERVE AS MAYOR PRO TEM. THE NOMINATION WAS SECONDED BY COUNCIL MEMBER MIKE FROST.

The nomination for Mike Frost carried by the following vote:

AYES: Council Member Mike Frost, Council Member Richard A. Viczorek, Council Member Joseph L. Muller, and Council Member Jamey M. Federico

NOES: None

ABSENT: Council Member Michael Villar

### **B. RECOGNITION OF OUTGOING MAYOR**

Mayor Joseph L. Muller presented a plaque to Council Member Jamey M. Federico and thanked him for his leadership and service and listed his accomplishments, including his volunteer and nonprofit work and helping people get out of Afghanistan earlier in the year.

Council Member Jamey M. Federico thanked and congratulated Mayor Joseph L. Muller and thanked his colleagues, family, City Staff, and community.

## **COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED**

Mayor Pro Tem Mike Frost turned in his list of meetings attended and thanked Council Member Jamey M. Federico for his leadership.

Council Member Richard A. Viczorek turned in his list of meetings attended.

Council Member Jamey M. Federico turned in his list of meetings attended. He shared he attended the Dana Hills High School Baseball Team's Christmas Tree Fundraiser and recommended the community get their Christmas trees from them next year, even though he was stung by a bee during the event.

Mayor Joseph L. Muller turned in his list of meetings attended and thanked Staff for a wonderful job with the holiday decorations and their hard work this past year, the Chamber of Commerce for a successful Turkey Trot, and his sons for attending the meeting. He wished everyone happy holidays and encouraged the community to shop local.

## STAFF REPORTS

City Attorney Patrick Munoz addressed Closed Session Item B: *In re National Prescription Opiate Litigation*, No. 1:17-md-02804 (N.D. Ohio). He stated that in Closed Session, the City Council authorized the City's participation in the settlement and the City Manager to execute any necessary documentation for that participation to occur.

City Manager Michael A. Killebrew congratulated City Clerk Shayna Sharke for gaining her Certified Municipal Clerk Certificate (CMC). He also congratulated Mayor Joseph L. Muller and Mayor Pro Tem Mike Frost on their appointments, and thanked Council Member Jamey M. Federico for his work over the past year. He wished everyone happy holidays and invited the community to bundle up and attend the Boat Parade on December 10 – 12<sup>th</sup>, 2021.

Mayor Joseph L. Muller addressed the Chamber of Commerce, stating he will pick a date for his pie in the face, since the Chamber signed up more than 160 participants for the Turkey Trot.

## ADJOURNMENT

There being no further business before the City Council at this session, Mayor Joseph L. Muller adjourned the meeting at 7:16 p.m. He announced that the next Regular Meeting of the City Council will be January 18, 2022, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.



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SHAYNA SHARKE  
CITY CLERK

APPROVED AT THE MEETING OF JANUARY 18, 2022



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**Meetings attended since November 17, 2021:**

**Mayor Joseph L. Muller**

11/17/2021 TCA  
11/18/2021 TCA  
11/18/2021 OCFA  
11/22/2021 OCTA  
11/29/2021 TCA  
12/06/2021 Tree Lighting  
12/07/2021 Niguel Shores Men's Club  
12/07/2021 TCA

**Mayor Pro Tem Mike Frost**

11/17/2021 OCCOG  
11/18/2021 Dana Point Chamber of Commerce  
11/25/2021 Turkey Trot  
12/02/2021 Dana Point Chamber of Commerce  
12/02/2021 South OC Watershed Committee Meeting  
12/04/2021 La Plaza Tree Lighting

**Council Member Jamey M. Federico**

11/17/2021 OCHFT Board Meeting  
11/18/2021 ACC-OC Annual Business Meeting  
11/18/2021 Cub Scout Pack 705  
11/25/2021 Dana Point Turkey Trot  
12/01/2021 MHET Christmas Luncheon  
12/02/2021 SHACC Christmas Party  
12/02/2021 Ribbon Cutting Compass Realty  
12/04/2021 La Plaza Park Tree Lighting  
12/06/2021 Pines Park Tree Lighting  
12/06/2021 CASA Board Meeting

**Council Member Richard A. Viczorek**

11/18/2021 SJHTCA Board of Directors Meeting  
11/18/2021 OCMVCD Board of Trustees Meeting

**Council Member Michael Villar**

12/02/2021 Q4 Community Engagement Panel