
CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
April 13, 2009

CALL TO ORDER

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

ROLL CALL OF CITY COUNCIL MEMBERS:

Present: Mayor Lisa Bartlett
Mayor Pro Tem Steven Weinberg
Council Member Joel Bishop
Council Member Lara Anderson
Council Member Scott Schoeffel

Absent: None

STAFF PRESENT: Douglas C. Chotkevys, City Manager; Patrick Munoz, City Attorney; Kathy M. Ward, City Clerk; Mike Killebrew, Director of Administrative Services; Mike Rose, Emergency Services Manager; Lt. Mark Levy, Chief of Police Services; Kyle Butterwick, Director of Community Development; Brad Fowler, Director of Public Works and Engineering; Lynn Kelly, Management Analyst; Christy Teague, Economic Development Manager; Kevin Evans, Director of Community Services and Parks; Jason Geldert, Senior Civil Engineer; Matthew Sinacori, City Engineer; Jackie Littler, Executive Secretary; DyAnne Weamire, Administrative Secretary; and Bobbi Ogan, Deputy City Clerk.

CLOSED SESSION

City Attorney Munoz indicated that 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), (2 cases)

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

RECONVENE CITY COUNCIL MEETING - CALL TO ORDER

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

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CLOSED SESSION ANNOUNCEMENT

City Attorney Munoz stated that he had nothing to report.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Lt. Colonel Robert McCarthy.

INVOCATION

The Invocation was provided by Associate Pastor Derick Zeulner of South Shores Church.

PRESENTATIONS AND PROCLAMATIONS

April Business of the Month - Estrella Pet Grooming

Management Analyst Kelly provided a PowerPoint presentation detailing Estrella Pet Grooming and the services they offer. Mayor Bartlett presented a Certificate of Recognition to Catherine Opsom for Estrella Pet Grooming being selected the Business of the Month for April.

Certificate of Recognition for Eagle Scout Harris Ian Smith

Mayor Bartlett reported that Harris had earned twenty-two merit badges in addition to his community related project which encompassed building and placing five (5) benches in three (3) dog parks in Dana Point. Mayor Bartlett presented a Certificate of Recognition to Harris Ian Smith for obtaining his Eagle Scout rank.

Certificate of Recognition for Battalion Chief Marc Hawkins

Chief Rick Robinson and Mayor Bartlett presented a Proclamation and a City Tile Plaque to Battalion Chief Marc Hawkins in honor of his 41 years of service in the Orange County Fire Authority.

SPECIAL PRESENTATION

Received an oral report provided by Lt. Colonel Robert McCarthy on his last tour in Iraq.

CONSENT CALENDAR

Staff removed Item 14 from Council's consideration.

IT WAS MOVED BY MAYOR PRO TEM STEVEN WEINBERG, SECONDED BY COUNCIL MEMBER JOEL BISHOP, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON CONSENT CALENDAR WITH THE EXCEPTION OF ITEM 14.

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The motion carried by the following vote:

AYES: Council Member Lara Anderson, Council Member Joel Bishop, Council Member Scott Schoeffel, Mayor Pro Tem Steven Weinberg, and Mayor Lisa A. Bartlett

NOES: 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, MARCH 9, 2009

APPROVED THE MINUTES.

3. PLANNING COMMISSION MEETING MINUTES, MARCH 2, 2009

RECEIVED AND FILED.

4. PLANNING COMMISSION ACTIONS, MEETING OF MARCH 16, 2009

RECEIVED AND FILED.

5. PLANNING COMMISSION ACTIONS, MEETING OF APRIL 6, 2009

RECEIVED AND FILED.

6. YOUTH BOARD MEETING MINUTES, MARCH 5, 2009

RECEIVED AND FILED.

7. YOUTH BOARD MEETING MINUTES, MARCH 19, 2009

RECEIVED AND FILED.

8. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

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9. CITY TREASURER'S REPORT, FEBRUARY 2009

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF FEBRUARY.

10. CLAIMS AND DEMANDS

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

11. TICKET DISTRIBUTION POLICY

ADOPTED **RESOLUTION 09-04-13-01** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING CITY COUNCIL POLICY NO. 223, TICKET DISTRIBUTION POLICY.

12. ROAD AND STORM DRAIN MAINTENANCE SERVICES AGREEMENT WITH THE COUNTY OF ORANGE

APPROVED THE AGREEMENT BETWEEN THE CITY OF DANA POINT AND THE COUNTY OF ORANGE FOR ROAD AND STORM DRAIN MAINTENANCE SERVICES AND AUTHORIZED THE CITY MANAGER TO EXECUTE THE AGREEMENT.

13. ADOPTION OF A RESOLUTION APPROVING AN AGREEMENT WITH SOUTH COAST WATER DISTRICT TO OPERATE A NEW STORM DRAIN DIVERSION AT STRAND BEACH

ADOPTED **RESOLUTION 09-04-13-02** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING AN AGREEMENT BETWEEN THE CITY OF DANA POINT AND THE SOUTH COAST WATER DISTRICT FOR THE INTERIM USE OF FACILITIES TO DIVERT URBAN RUNOFF FROM THE DIVERSION FACILITY CONSTRUCTED AT STRANDS BEACH.

14. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 13.04, PARKS AND RECREATIONAL FACILITIES REGULATIONS, OF THE MUNICIPAL CODE TO ADDRESS NEW PARKS AND FACILITIES IN THE CITY

THIS ITEM WAS REMOVED FROM COUNCIL'S CONSIDERATION.

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PUBLIC COMMENTS

Carlos Olvera, Dana Point, felt that allowing the demolition of the Doheny House would encourage demolition of remaining Doheny era homes.

Allen Wickstrom, Dana Point, thanked the Council Members who had attended SOCSA's opera gala at the Laguna Cliffs Marriott last week. He reported that they had been able to net over \$15,000 in support of arts education as a result. He recognized Council Member Schoeffel for his generous donation.

PUBLIC HEARINGS

15. ADOPTION OF A RESOLUTION TO VACATE AN EASEMENT FOR PUBLIC STREET OR ALLEY PURPOSES ADJOINING THE SOUTHERLY (REAR) PROPERTY LINE AT 25826 LAS VEGAS AVENUE (ASSESSOR PARCEL NUMBER 668-342-03)

City Manager Chotkevys provided a staff report.

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

IT WAS MOVED BY MAYOR PRO TEM STEVEN WEINBERG, SECONDED BY COUNCIL MEMBER SCOTT SCHOEFFEL, TO CONDUCT A PUBLIC HEARING AND ADOPT **RESOLUTION 09-04-13-03** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT ORDERING THE VACATION OF AN EASEMENT FOR PUBLIC STREET OR ALLEY PURPOSES ADJOINING THE SOUTHERLY (REAR) PROPERTY LINE AT 25826 LAS VEGAS AVENUE (ASSESSOR PARCEL NUMBER 668-342-03).

The motion carried by the following vote:

AYES: Council Member Lara Anderson, Council Member Joel Bishop, and Council Member Scott Schoeffel, Mayor Pro Tem Steven Weinberg, and Mayor Lisa A. Bartlett

NOES: None

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UNFINISHED BUSINESS

16. CONSTRUCTION AND MAINTENANCE AGREEMENT WITH SCRRA AND OCTA FOR RAILROAD-RELATED SAFETY ENHANCEMENTS, AND POTENTIAL "QUIET ZONE" AT THE BEACH ROAD CROSSING

Mayor Bartlett recused herself at 6:37 p.m. due to a potential financial conflict of interest due to the fact that her residence was within 500 feet of the subject property and left the Chamber.

City Manager Chotkevys provided an introduction of the item and City Attorney Munoz provided a summary of the liability discussion.

Council Member Anderson asked how the train engineer knows when he is approaching a crossing.

Steve Wylie, Assistant Executive Officer of Metrolink, replied that Federal law requires a locomotive engineer to sound a horn at a point at 1/4 mile from the crossing. He stated that there is a whistle board which provides an indication to the engineer when he is 1/4 mile from the crossing.

Council Member Anderson asked if in places where a Quiet Zone is established, the engineer would still have to blow the horn if they see someone on the track.

Steve Wylie replied that was correct and that is the way it is supposed to work. He stated that the train horn rule which was promulgated by the Federal Railroad Administration pursuant to Congressional law vests the responsibility for blowing or not blowing the horn with the locomotive engineer in a Quiet Zone. He added that absent a Quiet Zone, the engineer is required to blow the horn at the whistle board through the crossing no matter what. He added that there were circumstances in the rule that require the engineer to blow horns regardless.

Council Member Anderson asked why would the City want to incur more liability if we do the safety enhancements and it is designated a Quiet Zone if the engineer would still be required to blow the horn in a Quiet Zone.

Steve Wylie replied that the theory behind a Quiet Zone is that if you have equipped your crossing with the safety enhancements you are removing the need for the horn. He stated that the advice they have been giving communities up and down their five (5) county service area is that the best thing that can be done to protect itself from liability is to do the best job you can to protect the crossing by improving the crossing and following the procedure that is outlined in the Federal Train Horn Rule.

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Council Member Anderson asked if it was Mr. Wylie's agency's opinion that the ultimate in railway safety would be to do the safety enhancements and to continue to blow the horn at 1/4 mile from each crossing.

Steve Wylie replied that it would be the ultimate but that it was not their decision; that decision was the City's to make.

Council Member Bishop asked where the engineer was located on the train because he has noticed that on the Amtrak that the engine was located in the back of the train.

Steve Wylie replied that the engineer is always at the front of the train regardless of where the engine is located.

Council Member Schoeffel asked how the engineer would know if there were any rail workers in the area.

Steve Wylie replied that the engineer receives a track warrant at the beginning of his run which is the notification that there are track workers along his route.

Council Member Schoeffel asked for clarification of the process for obtaining a Quiet Zone.

Steve Wylie replied that the typical process is what is happening here; the community and the railroad come together to decide what is in the best interest of safety for a particular crossing, once that agreement is reached the City can either say alright we are going to do a Quiet Zone, the improvements get put in place and 21 days later after final notice there is a Quiet Zone. He added that what the City is doing is taking this process one step further; once the agreement is approved, SCRRA will construct the improvements on the railroad as well as the civil improvements on the street side in the interest of expediting this county-long corridor and then at the end of that process, the City will decide whether or not to have a Quiet Zone.

Council Member Anderson asked if there was a horn sequence.

Steve Wylie replied that there is a regulatory requirement for the sequence; two short, long and a short regardless of time of day.

Council Member Bishop asked whether this project has been engineered and besides the dual gates, what other safety enhancements are there for pedestrians.

Steve Wylie replied that Metrolink had commissioned a comprehensive set of grade crossing standards and they had collected best practices from all over the country. He stated that they had focused on improving the safety for non-motorized users. He added that they had come up with the standard for the installation of pedestrian gates, improved paved crossing,

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tactile warning strips, a swing gate, and channelization treatments to keep pedestrians out of vehicle paths.

Council Member Bishop asked if Mr. Wylie had seen the crossing designed so that bicyclists would have to get off their bikes and walk across or is it designed where they could ride across the tracks.

Steve Wylie replied that with this project the median will be extended which will be a deterrent to bicyclists to cut across the tracks at a diagonal. He suggested that the City have more pavement markings indicating where the bike trail was.

Council Member Bishop asked Jonathan Shull of California Joint Powers Insurance Authority how long it will take for their committee to determine whether the City would have insurance coverage.

Jonathan Shull, CJPIA replied that there is a Coverage Committee made up from the Executive Committee that will define the document which is approved by the membership. He stated that the Coverage Committee is scheduled to meet in early May and late May and by the end of late May we should have resolution of the issue.

Council Member Bishop asked Mr. Shull what his thought was, should the City have just approved this project.

Jonathan Shull replied that the City has been very diligent in ensuring that it was addressing these issues and should be complimented.

Mayor Pro Tem Weinberg recessed the meeting at 7:15 and reconvened at 7:22 p.m.

Mayor Pro Tem Weinberg opened the Public Comments.

Berni Neal, Capistrano Beach, felt that the existing format of the trains, horns, and landscaping mar the potential that Capistrano Beach has of adding to Dana Point as a beach destination.

Jason Hill, Capistrano Beach, spoke regarding the safety of the railroad crossing. He felt that the safety equipment at the crossing was inadequate.

Hayden Livesay, Capistrano Beach, spoke regarding the decibel level of the train horn and how it affects their children.

Kim Tarantino, Capistrano Beach, spoke regarding the number of times the train horns are sounding each day. She stated that there were 49 trains daily which blow their horns day and night.

Lester Hill, Capistrano Beach, felt that the Quiet Zone would encourage more visitors to the beach and the businesses near the railroad crossing.

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Dr. William Sears, Capistrano Beach, stated that the Quiet Zone was an opportunity for the City to improve the quality of life in Capistrano Beach. He felt that the liability would be reduced by improving the rail crossing.

Nick Tarantino, Capistrano Beach, felt that there is no one monitoring the train engineers when they blow their horns and that more oversight was needed.

Robert Bancroft, Capistrano Beach, representing Capistrano Bay Community Services District, stated that the District is in support of the construction of the safety enhancements.

Roger Worthington, Capistrano Beach, spoke regarding the loudness of the train horns and how they affect his family's quality of life.

Mayor Pro Tem Weinberg closed the Public Comments.

Council Member Anderson asked about the change in mandate from four years ago that one of the speakers had mentioned.

Steve Wylie replied that the mandate put in place the general guidelines to blow train horns at a 1/4 mile from a crossing and provides the process by which a community can elect to achieve a Quiet Zone in lieu of that.

Council Member Anderson asked prior to the mandate what the procedure was.

Steve Wylie replied that there were various State regulations and locally enforced whistle bans that were inconsistent across the United States. He stated that about thirteen years ago Congress drafted the national legislation that brought some uniformity to the whistle blowing requirements which ultimately resulted in legislation that then implemented the rules existing today.

Council Member Anderson asked if the train horns were getting worse as some of the speakers had indicated.

Steve Wylie replied that he didn't think so, that the train horn rule has a minimum level of 96 decibels and a maximum of 110.

Darryl Johnson, OCTA, stated that in anticipation of the change in the horn blowing rule, that in 2003 the OCTA Board had begun studying the issue in preparing for all 52 crossings within Orange County. He added that discussion with all 34 cities and the County renewed Measure M funding for Quiet Zones and safety enhancements were included.

Council Member Bishop stated that he needs to bifurcate the issues. He added that he had no problem with the safety enhancements and he supports these being built, but that the Quiet Zone was a separate issue. He stated that the City was close to finding out what their liability would be if approved.

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Council Member Anderson asked what the timing was for the Quiet Zone process.

Darryl Johnson, OCTA, replied that when the OCTA approved the 70 million dollar county-wide program it came with a very distinct focus to do the safety enhancements in a manner that would leave each crossing in the county with the appropriate set of improvements for the City to either establish and apply for a Quiet Zone. He stated that an application or establishment of a Quiet Zone can not be done until the improvements are completed and the notices are filed.

City Manager Chothevys felt that the appropriate thing to do if the Council so chooses, was to do the safety enhancements, get some additional information from the City's insurance carrier, and then have the discussion whether the Council wants to go forward with a Quiet Zone.

Council Member Anderson asked what the cost will be to the City to construct the safety enhancements.

Director Fowler replied that the City's current estimated share is \$162,000 and staff would recommend that Council authorize that amount plus a 25% contingency.

IT WAS MOVED BY COUNCIL MEMBER JOEL BISHOP, SECONDED BY MAYOR PRO TEM STEVEN WEINBERG, THAT THE CITY COUNCIL 1. APPROVE THE CONSTRUCTION AND MAINTENANCE AGREEMENT; WITH SCRRRA, 2. AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT, 3. AUTHORIZE A BUDGETED 12% MATCHING FUND PAYMENT REQUIRED BY THE OCTA FOR PROJECT CONSTRUCTION ADMINISTRATION CURRENTLY ESTIMATED AT \$162,415 PLUS A 25% CONTINGENCY, AND 4. AUTHORIZE A 12% PROJECT BUDGET ADJUSTMENT TO \$203,019 THROUGH A TRANSFER OF \$53,019 FROM CAPITAL IMPROVEMENT PROJECT #1206 PROJECT SAVINGS TO COVER THIS LATEST BUDGET ESTIMATE.

AYES: Council Member Lara Anderson, Council Member Joel Bishop, and Council Member Scott Schoeffel, and Mayor Pro Tem Steven Weinberg

NOES: None

ABSENT: Mayor Lisa A. Bartlett

Mayor Bartlett returned to the meeting at 7:55 p.m.

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17. 2009 WEED ABATEMENT PROGRAM

City Manager Chotkevys provided a staff report.

There being no requests to speak on this item, the Mayor opened and closed the Public Comments.

IT WAS MOVED BY COUNCIL MEMBER JOEL BISHOP, SECONDED BY MAYOR PRO TEM STEVEN WEINBERG, HAVING HEARD NO OBJECTIONS REGARDING WEED ABATEMENT AND THEREAFTER ADOPTED **RESOLUTION 09-04-13-04** ENTITLED:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, HEARING NO OBJECTIONS AND PROCEEDING WITH WEED ABATEMENT.

The motion carried by the following vote:

AYES: Council Member Lara Anderson, Council Member Joel Bishop, and Council Member Scott Schoeffel, Mayor Pro Tem Steven Weinberg, and Mayor Lisa A. Bartlett

NOES: None

NEW BUSINESS

There was no New Business.

PUBLIC COMMENTS

There were no additional Public Comments.

STAFF REPORTS

City Manager Chotkevys previewed a commercial which is an advertisement for the Dana Point Grand Prix event that is set to air on KOCE TV. He stated that this commercial will air 90 times between now and the event.

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Council Member Bishop stated that he had turned in his list of meetings he had attended to the City Clerk. He reported that there would be one public meeting with the Attorney General on April 29, 2009 at 5:00 p.m. at the Top of the World school in Laguna Beach regarding the South Coast Medical Hospital. He added that the Attorney General will accept public testimony and then require the new owner to keep certain

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facilities open. He stated that six cities use that hospital and that it was important to keep the Emergency Room open 24 hours a day among other hospital facilities.

Council Member Schoeffel stated that the SOCSA opera was a wonderful event and a great display of talent and dedication. He commended staff for the egg hunt at Sea Canyon Park and fellow Council Members and staff for all of their hard work and due diligence that they had put into researching the railroad crossing enhancements.

Council Member Anderson reported that she had attended the Surfing Heritage Foundation town hall meeting on March 25th at the Community Center. She stated that the egg hunt at Sea Canyon was a sight to behold; a great event. She announced that the Pet Project Foundation's 16th Annual Wag-A-Thon was coming up on Saturday, April 25th. She stated that the website is www.petprojectfoundation.org.

Mayor Pro Tem Weinberg stated that he had turned in a list of his meetings to the City Clerk. He asked everyone to tell their friends about the Dana Point Grand Prix on April 26th. He stated that Floyd Landis would be co-announcing the pro race. He added that the kids race registration begins at 8:00 a.m. and he encouraged early sign ups as the City expects to have 400-500 children racing. He announced that In and Out would be serving burgers. He stated that the website is www.danapointgrandprix.com.

Mayor Bartlett reported that she had attended the following:

Numerous TCA Meetings and met with residents during office hours.

March 10 - Provided the welcome home remarks at the reception for the 5th Marines at Cannon's Restaurant.

March 11 and 25 - Surfing Heritage Foundation Museum town hall meetings.

March 12 - League of Cities meeting.

March 14 - Senior's St. Patty's luncheon at the Community Center and also the Boys and Girls Club's Teen Center grand opening.

March 15 - In the morning had attended and started the City's first ever Dana Point Grunion Race at Doheny State Beach and in the afternoon she welcomed guest to the City's concerts at Baby Beach which were a huge success and well attended.

March 16 - Gave the welcome remarks to the California Municipal Finance conference at the St. Regis.

March 17 - Presented a City Proclamation at the Annual Mayor's Prayer Breakfast.

March 18 - State of the County Address where Supervisor Pat Bates provided an update on the activities and finances in Orange County.

March 21 - To support the neighboring City of San Juan Capistrano, she attended the Swallows Day Parade which has been around for a long time. The parade was 3 hours long.

March 27 - LAFCO conference in Costa Mesa to learn more about the jurisdictional aspects of LAFCO and how the City could benefit from a regional approach on projects.

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March 29 - Presented a Proclamation for the Donate Life event at the Salt Creek Grille. Donate Life supports organ and tissue donations and this worldwide program saves thousands of lives each year.

March 31 - Town Center Study Session which was well attended by the public. The Council had received a lot of positive comments from the attendees.

April 3 - Rode the Amtrak to Los Angeles for an all day meeting. She has been appointed to the California League of Cities Environmental Quality Policy Committee. They spent the day discussing pertinent issues and voting to provide amendments to some proposed legislation.

April 7 - The City Council interviewed and appointed individuals to the Planning Commission and Traffic Improvement Subcommittee. Congratulations to Norm Denton and April O'Connor on their appointments to the Planning Commission and to the five residents on their appointments to the Traffic Improvement Subcommittee.

April 9 - Sheriff's Medal of Valor event in Irvine. Several of our Dana Point Sheriff Deputies received awards for their efforts to save the life of a woman on the Via California overpass.

She announced the following upcoming events:

April 15 - Artist by the Sea event at the Ocean Institute

April 18 - Earth Ocean Day in La Plaza and in the Harbor from 9 a.m. to 12 noon

April 23 - State of the City Address at the Marriott

May 2 and 3 - Dana Point Relay for Life. She encouraged everyone to sign up with a team and participate in the event.

May 9 - Two fundraisers; Monarch Beach Sunrise Rotary fundraiser for children's charities at the Doubletree Hotel and the Boys and Girls Clubs fundraiser at the Community Center in San Juan Capistrano. Call the respective groups for tickets and additional information.

April 17 - Dana Point Coastal Arts Performing Arts Series; "The Mirror" at 7:00 p.m. at the Dana Point Community House.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Bartlett declared the meeting adjourned at 8:10 p.m. and announced that the next Regular Meeting of the City Council will be held on April 27, 2009, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.