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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
July 27, 2009**

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**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 A. Bartlett  
Mayor Pro Tem Steven Weinberg  
Council Member Lara Anderson  
Council Member Joel Bishop  
Council Member Scott Schoeffel

STAFF PRESENT: Douglas C. Chotkevys, City Manager; Patrick Munoz, City Attorney; Kathy M. Ward, City Clerk; Michael Killebrew, Assistant City Manager; Lt. Mark Levy, Chief of Police Services; Kyle Butterwick, Director of Community Development; Brad Fowler, Director of Public Works and Engineering; Sea Shelton, Senior Management Analyst; John Tilton, City Architect; Christy Teague, Economic Development Manager; Lynn Kelly, Management Analyst, Kevin Evans, Director of Community Services and Parks; Jackie Littler, Executive Secretary; DyAnne Weamire, Administrative Secretary; and Jennifer Walters, Secretary.

**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)
- B. CONFERENCE WITH LEGAL COUNSEL - INITIATION OF LITIGATION, Government Code § 54956.9 (c), (1 case)
- C. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, Government Code § 54956.9 (a), (2 cases) Name of Case: South Orange County Wastewater Authority v. City of Dana Point Case No. 30-2009-00283523 Name of Case: Paul Douglas, Carl Grewe, Two Doheny LLC v. City of Dana Point Case No. 30-2009-00125363
- D. CONFERENCE WITH REAL LABOR NEGOTIATOR, Government Code § 54957.6 Agency Designated Representatives: City Manager Unrepresented and Represented Employees: All positions in City

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.

## **CLOSED SESSION ANNOUNCEMENT**

City Attorney Munoz stated that he had no announcement.

## **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Mayor Bartlett's niece, Nicole Ruffino.

## **INVOCATION**

The Invocation was provided by Bishop Kirk Lindahl of Capistrano First Ward, Church of Jesus Christ of Latter Day Saints.

## **PRESENTATIONS AND PROCLAMATIONS**

### July Business of the Month, Nancy J. Baumann, CPA

Management Analyst Kelly provided a PowerPoint presentation. She reported that Nancy Baumann had been a part of the Dana Point business community since 1988. She stated that Nancy understands the need to give back to the community and for the past 20 years has been involved in the Monarch Beach Sunrise Rotary as well as providing pro bono work for local non-profit organizations. Mayor Bartlett presented a Certificate of Recognition to Nancy J. Baumann for her being selected as the Featured Business of the Month, July 2009.

### Recognition of Outgoing Charitable Grant Subcommittee Members Judy Davison and Nancy Jenkins

Mayor Bartlett presented Certificates of Recognition to Judy Davison and Nancy Jenkins thanking them for their service to the City while serving on the Charitable Grant Subcommittee.

## **CONSENT CALENDAR**

Council Member Anderson abstained on Items 2 and 16, and removed Item 24 from the Consent Calendar. Council Member Bishop abstained on Item 17 and Mayor Bartlett removed Items 12, 20, and 22 from the Consent Calendar.

IT WAS MOVED BY MAYOR PRO TEM STEVEN WEINBERG, SECONDED BY COUNCIL MEMBER JOEL BISHOP, ACCEPT FOR ALL ITEMS LISTED ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEMS 12, 20, 22, AND 24.

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, JUNE 8, 2009**

APPROVED THE MINUTES.

**3. PLANNING COMMISSION MEETING MINUTES, JUNE 1, 2009**

RECEIVED AND FILED.

**4. PLANNING COMMISSION MEETING MINUTES, JUNE 15, 2009**

RECEIVED AND FILED.

**5. PLANNING COMMISSION MEETING MINUTES, JULY 6, 2009**

RECEIVED AND FILED.

**6. PLANNING COMMISSION ACTIONS, MEETING OF JULY 20, 2009**

RECEIVED AND FILED.

**7. YOUTH BOARD MEETING MINUTES, JUNE 4, 2009**

RECEIVED AND FILED.

**8. CHARITABLE GRANT SUBCOMMITTEE DRAFT MEETING MINUTES, JULY 8, 2009**

RECEIVED AND FILED.

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

RECEIVED AND FILED.

**10. CITY TREASURER'S REPORT, MAY 2009**

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF MAY 2009.

**11. CLAIMS AND DEMANDS**

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

**12. DANA POINT YOUTH BOARD APPOINTMENTS**

Mayor Bartlett removed this item from the Consent Calendar.

Mayor Bartlett thanked everyone in the community that had applied to the Dana Point Youth Board and thanked those who are serving on the board this coming year for their time and effort.

IT WAS MOVED BY COUNCIL MEMBER LARA ANDERSON, SECONDED BY COUNCIL MEMBER SCOTT SCHOEFFEL, APPOINT ELEVEN (11) BOARD MEMBERS AND FOURTEEN (14) MEMBERS AT-LARGE TO THE DANA POINT YOUTH BOARD.

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

**13. ADOPTION OF PROPOSED AMENDMENTS TO CHAPTER 1.10, ENTITLED "ADMINISTRATIVE CITATIONS" OF THE DANA POINT MUNICIPAL CODE RELATING TO THE ENFORCEMENT OF VIOLATIONS OF THE MUNICIPAL CODE**

INTRODUCED AND HELD FIRST READING OF AN ORDINANCE ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 1.10 ENTITLED "ADMINISTRATIVE CITATIONS" OF THE MUNICIPAL CODE RELATING TO THE ENFORCEMENT OF VIOLATIONS OF THE MUNICIPAL CODE.*

**14. ADOPTION OF A RESOLUTION GRANTING TWO EASEMENTS BETWEEN THE CITY OF DANA POINT AND SOUTH COAST WATER DISTRICT FOR THE PLACEMENT AND FUTURE MAINTENANCE OF WATER AND SEWER FACILITIES AT SEA TERRACE PARK AND PINES PARK RESPECTIVELY**

ADOPTED RESOLUTION 09-07-27-01 ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, GRANTING TWO EASEMENTS BETWEEN THE CITY OF DANA POINT AND SOUTH COAST WATER DISTRICT FOR THE MAINTENANCE OF WATER AND SEWER FACILITIES AT SEA TERRACE PARK AND PINES PARK RESPECTIVELY.*

**15. ADOPTION OF A RESOLUTION APPROVING A NOTICE OF COMPLETION FOR THE CONSTRUCTION OF THE PACIFIC COAST HIGHWAY CONGESTION RELIEF PROJECT**

**ADOPTED RESOLUTION 09-07-27-02 ENTITLED:**

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A NOTICE OF COMPLETION FOR THE CONSTRUCTION OF THE PROJECT ENTITLED "PACIFIC COAST HIGHWAY CONGESTION RELIEF PROJECT".*

**16. SECOND READING AND ADOPTION OF AN ORDINANCE APPROVING ZONE TEXT AMENDMENT ZTA07-02 AND ZONE CHANGE ZC07-01 FOR PROPERTY LOCATED AT 34202 DEL OBISPO STREET (Makar Properties, LLC) AND AUTHORIZE SUBMITTAL OF THE ORDINANCE AND ZONE CHANGE TO THE CALIFORNIA COASTAL COMMISSION FOR FINAL CERTIFICATION (LOCAL COASTAL PROGRAM AMENDMENT LCPA07-01)**

**HELD A SECOND READING AND ADOPTED ORDINANCE 09-06 ENTITLED:**

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA07-02 AND ZONE CHANGE ZC07-01 TO ESTABLISH A NEW ZONING CATEGORY OF "RESIDENTIAL/COMMERCIAL-18" (R/C-18) IN CHAPTER 9.13 OF THE ZONING ORDINANCE AND TO CHANGE THE DESIGNATION OF THE SUBJECT SITE, 34202 DEL OBISPO STREET FROM "DANA POINT SPECIFIC PLAN - COASTAL RECREATION SPACE" TO "R/C-18", AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA07-01 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.*

**17. RESOLUTION AUTHORIZING AND ORDERING JUDICIAL FORECLOSURE OF CURRENT AND FUTURE DELINQUENT SPECIAL TAXES IN COMMUNITY FACILITIES DISTRICT NO. 2006-1 PURSUANT TO THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982 AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH**

**ADOPTED RESOLUTION 09-07-27-03 ENTITLED:**

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, ACTING AS THE GOVERNING BODY OF COMMUNITY FACILITIES DISTRICT NO. 2006-1 OF THE CITY OF DANA POINT, AUTHORIZING AND ORDERING*

*JUDICIAL FORECLOSURE OF CURRENT AND FUTURE DELINQUENT SPECIAL TAXES IN SAID DISTRICT PURSUANT TO THE MELLO-ROOS COMMUNITY FACILITIES ACT OF 1982 AND TAKING CERTAIN ACTIONS IN CONNECTION THEREWITH.*

**18. HISTORIC PRESERVATION AGREEMENT (MILLS ACT) FOR THE PROPERTY LOCATED AT 33962 GRANADA DRIVE**

AUTHORIZED THE MAYOR TO SIGN A HISTORIC PROPERTY PRESERVATION AGREEMENT WHICH WOULD ALLOW THE PROPERTY OWNERS, MICHAEL GIERS AND LINDA MOORE, OF THE HISTORIC STRUCTURE LOCATED AT 33962 GRANADA DRIVE, TO PARTICIPATE IN THE STATE'S MILLS ACT PROGRAM.

**19. APPROVAL OF CONTINUATION OF MAINTENANCE AND SERVICE AGREEMENT FOR URBAN RUNOFF OZONE TREATMENT PROCESS AT NORTH CREEK**

AUTHORIZED THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO A MAINTENANCE AND SERVICE AGREEMENT WITH QUANTUM OZONE INC. FOR THE URBAN RUNOFF OZONE TREATMENT PILOT PROCESS AT NORTH CREEK.

**20. INTERVENTION SPECIALIST PROGRAM**

Mayor Bartlett removed this item from the Consent Calendar.

Mayor Bartlett stated that she was very pleased that the City was moving forward with this program. She felt that early detection of problems at the high school level was very important as well as early intervention.

IT WAS MOVED BY MAYOR PRO TEM STEVEN WEINBERG, SECONDED BY MAYOR LISA A. BARTLETT, AUTHORIZED THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE CAPISTRANO UNIFIED SCHOOL DISTRICT AND APPROVE A CONTRACT FOR CONSULTANT SERVICES TO CONTINUE THE INTERVENTION SPECIALIST PROGRAM AT DANA HILLS HIGH SCHOOL.

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

**21. CERAMIC TILE CITY SEAL LOGO FOR CITY HALL AND THE COMMUNITY CENTER**

APPROVED THE FABRICATION AND INSTALLATION OF SUBJECT CERAMIC TILE WORK.

**22. PARTICIPATION IN ORANGE COUNTY MORTGAGE CREDIT CERTIFICATE PROGRAM**

Mayor Bartlett removed this item from the Consent Calendar.

Mayor Bartlett felt that this was a great program for first time home buyers and stated that anything the City could do to help young families when they are starting out is very important.

IT WAS MOVED BY MAYOR PRO TEM STEVEN WEINBERG, SECONDED BY MAYOR LISA A. BARTLETT, ADOPTED **RESOLUTION 09-07-27-05** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, TO PARTICIPATE IN THE MORTGAGE CREDIT CERTIFICATE PROGRAM THROUGH THE COUNTY OF ORANGE.*

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

**23. ORANGE COUNTY COUNCIL OF GOVERNMENTS (OCCOG) JOINT POWERS AGREEMENT**

ADOPTED **RESOLUTION 09-07-27-04** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL FO THE CITY OF DANA POINT, CALIFORNIA, EXECUTING AN AMENDED AND RESTATED ORANGE COUNTY COUNCIL OF GOVERNMENTS (OCCOG) JOINT POWERS AGREEMENT; and*

AUTHORIZED THE MAYOR TO EXECUTE THE AMENDED AND RESTATED JOINT POWERS AGREEMENT, AND TRANSMIT THE SIGNED OCCOG JOINT POWERS AGREEMENT TO THE OCCOG INTERIM EXECUTIVE DIRECTOR.

## 24. EXTENSION OF LEGISLATIVE ADVOCACY AGREEMENT

Council Member Anderson removed this item from the Consent Calendar.

City Manager Chotkevys provided a staff report.

Mayor Bartlett asked if several new Commissioners could be appointed before the October hearing and stated that it would be important to keep the positive momentum going from the last hearing.

City Manager Chotkevys replied that yes, that is correct or the Commissioners could be re-appointed but the City has to assume that new Commissioners would be appointed. He stated that the sitting Commissioners had been there from day one and if there are new Commissioners the City is going to have to spend time getting them acquainted with the merits of the project.

Council Member Anderson asked what Mr. Neish does for the City.

City Manager Chotkevys replied that he is the City's dedicated voice to the Commissioners. He stated that Mr. Neish meets with the Commissioners at their home offices, he responds to questions, and he meets with them at the Commission meetings. He added that staff does not have the time or resources to accomplish this. He stated that staff thought that the project was going to be approved at the June Coastal Commission meeting, because we had reached a tentative agreement on every point with the California Coastal Commission staff. Unfortunately, the hearing was continued because there was not a quorum to hear our item.

Council Member Anderson asked if the County had their own legislative advocate or are they sharing the costs with the City.

City Manager Chotkevys replied that he has plans in the coming weeks to discuss with the County CEO sharing the costs of our legislative advocacy. He stated that he did not know the status of their legislative advocacy that he has been told that they have paid upwards of over \$100,000.

Council Member Anderson stated that she was concerned with authorizing this expenditure and that she would feel much better approving the contract extension if she knew that the County was sharing some of the cost.

Mayor Pro Tem Weinberg felt that it was important that the City continues to work with the Coastal Commission until the item is heard otherwise the project will lose their support.

IT WAS MOVED BY MAYOR PRO TEM STEVEN WEINBERG, SECONDED BY COUNCIL MEMBER JOEL BISHOP, AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT EXTENSION WITH DAVID B. NEISH, INC. FOR THE LEGISLATIVE ADVOCACY SERVICES RELATIVE TO THE CITY FOR



THE DANA POINT HARBOR LOCAL COASTAL PROGRAM AMENDMENT  
PENDING BEFORE THE CALIFORNIA COASTAL COMMISSION.

The motion carried by the following vote:

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

NOES: Council Member Lara Anderson

**PUBLIC COMMENTS**

Todd Glen, Dana Point, spoke regarding the South Shores Church project and how he felt that the environmental review process has been compromised. He asked for the City Council to intervene to halt the MND process.

Thomas Beadel, Dana Point, felt that the rights of the people required to receive written notification of the adoption of a Mitigated Negative Declaration had been violated. He reported that he lives 41 feet from the back of the proposed South Shores Church expansion and the first notice he had received in regards to this project was for the Planning Commission Public Hearing on July 20, 2009. He asked for the Council to review the Minutes of the Planning Commission and require a full draft EIR for this project.

Mayor Bartlett asked the City Manager to provide an update on this process.

City Manager Chotkevys clarified why it was not appropriate for the City Council to comment on the church project at this time.

City Attorney Munoz stated that the City Council can not legally take any action on the requests that have been made tonight as it is not on their posted agenda.

Elissa Mayo, Dana Point, spoke regarding the need for an EIR for the South Shores Church project.

Roger Von Butow, Laguna Beach, spoke regarding land trust law and the consultant used by the church for the environmental analysis.

Patricia McCarroll, Dana Point, spoke regarding the proposed church project.

Dr. Ron Lackey, Dana Point, spoke regarding the continuous expansion of property and traffic flow in the City. He also mentioned that he felt that the pedestrian bridge was not used very much.

Director of Public Works and Engineering Fowler reported that on the weekends, over 700 people use the bridge and 400 during the week.

Director of Disaster Preparedness and Facilities Rose added that recently a wedding was held on the pedestrian bridge.

Mayor Bartlett stated that the bridge not only allows the pedestrians to cross the street safely, but also allows the traffic to flow through the intersection and the bus does not block traffic because of the cut out.

## **PUBLIC HEARINGS**

### **25. COASTAL DEVELOPMENT PERMIT CDP07-20 PERTAINING TO CONDITIONAL VACATION OF SCENIC DRIVE (CONTINUED FROM THE MEETING OF JUNE 8, 2009)**

City Attorney Munoz provided a staff report.

Dr. Bud Bruggeman, Dana Point, stated that he supports the action of the Planning Commission from last week and the changes in the staff report since that time as well as the minor modifications in the CC&Rs. He thanked staff for all of their efforts.

Ann Bruggeman, Dana Point, stated that she supports the vacation of Scenic Drive and urged the Council's approval of this item.

Carol Plowman, Dana Point, thanked staff for their efforts and support on this item.

Lee Ann Carranza, Capistrano Beach, stated that she was speaking on behalf of the Center for National Lands Management and that they were in favor of this vacation as it will control access to the area. She thanked staff for their recommended action.

Bob Theel, Dana Point, stated that he was representing Marketta Gassel who lives on Scenic Drive. He thanked staff for being supportive and for trying to find a way for the homeowners to jointly own and maintain Scenic Drive as a private street. He added that she does not concur with the CC&Rs and that there were aspects of the CC&Rs that she does not agree with.

Mayor Bartlett closed the Public Hearing.

Council Member Anderson clarified for the public that the City Council is being asked to vacate a public street to a private street. She felt that Scenic Drive was really a private street already as it is a dead end street that serves three (3) homes. She stated that it was costing the City money to maintain the street and she made a motion to approve the vacation.

Council Member Bishop asked how long do the three (3) owners have to agree to the CC&Rs.

City Attorney Munoz replied that the owners have forty days from tonight.

Mayor Pro Tem Weinberg stated that the City has presented a set of CC&R's, could the homeowners craft their own document.

City Attorney Munoz replied that the City specifically drafted the Resolution to allow the City Manager to approve an amended set of CC&Rs.

City Manager Chotkevys clarified that it is the City's hope and anticipation that any other discussions on this subject would be between the homeowners and not cost the City any more than it already has. He stated that City Staff has put a lot of time and effort into this proposal because the City is involved due to the Headlands Development and Conservation Plan. He added that by Council's action tonight that the City has done everything they can do.

Mayor Pro Tem Weinberg stated that he supports this proposal to vacate and that he hopes that the City Council does not have to review this proposal again.

Mayor Bartlett stated that this vacation proposal has gone on a long time and has taken a lot of staff's time. She added that she hoped that the homeowners could come to an agreement within the designated timeframe.

IT WAS MOVED BY COUNCIL MEMBER LARA ANDERSON, SECONDED BY MAYOR LISA A. BARTLETT, ADOPT **RESOLUTION 09-07-27-06** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT CDP07-20 TO ALLOW THE VACATION OF SCENIC DRIVE AS SPECIFIED IN THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN (HDGP), AND A LOT LINE ADJUSTMENT.*

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

## **26. 2009 WEED ABATEMENT PROGRAM**

City Manager Chotkevys provided a staff report.

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

Mayor Bartlett felt that this was an excellent program that helps maintain and beautify the City.

Council Member Anderson stated that for those who have allergy sufferers in their family, this program makes a big difference.

IT WAS MOVED BY MAYOR PRO TEM STEVEN WEINBERG, SECONDED BY MAYOR LISA A. BARTLETT, CONDUCT A HEARING ON THE WEED ABATEMENT COST REPORT AND ADOPT **RESOLUTION 09-07-27-07** CONFIRMING THE COST REPORT AND PROVIDING FOR THE COLLECTION ON THE REGULAR TAX BILL ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, CONFIRMING THE COST OF ABATEMENT AND PROVIDING FOR THE COLLECTION ON THE REGULAR TAX BILL.*

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

Mayor Bartlett recessed the meeting at 7:20 p.m. and reconvened the meeting at 7:30 p.m.

## **UNFINISHED BUSINESS**

### **27. UPDATE - SHORT TERM VACATION RENTALS**

City Manager Chotkevys provided a staff report.

City Attorney Munoz clarified that Transient Occupancy applies to occupancies of less than 30 days and under our Code the tax would be due. He added that the City's Zoning Code does not authorize short term vacation rentals in private residential areas. He stated that it was Staff's recommendation that if the Council was interested in exploring whether to permit vacation rentals to occur in residentially zone areas that during the review that the City begin to collect the TOT. He added that people would be notified that the City was going to begin to collect the tax, but if the Council was not interested in pursuing an amendment to the Code to allow short term rentals, then staff would notify people that they would need to cease the activity and from that point forward begin to prosecute violators.

Ken Ross, Dana Point, stated that Capistrano Realty has been coordinating short term rentals for about 46 years. He felt that they brought in a different clientele into Dana Point. He added that it would be impossible for the City to audit and collect TOT from the short term rentals as it would be a discriminatory tax to the few that comply.

Vonne Barnes, San Clemente, stated that she was disappointed that the City did not work with the task force that was created in 2007 for this issue. She felt that there was a distinct difference between short term rentals and hotels.

Tom Barnes, San Clemente, indicated that the staff report was one-sided and never mentioned a positive comment regarding short term rentals. He felt that vacation rentals and hotels were very different and the same rules should not apply.

Jason Colaco, Dana Point, stated that he did not support additional taxes on short term vacation rentals as it would reduce the ability to rent them because of the extra costs. He felt that the vacation rentals added to the tourism of the city.

Mike Sautner, San Juan Capistrano, stated that as a vacation rental owner, that he would prefer an annual fee rather than charging a 10% TOT. He asked the City Council to consider other alternatives.

Beth Everett, Laguna Niguel, stated that she owns three (3) condos and that she rents to wonderful people from all over the world. She added that she spends about \$12,000 per year to advertise internationally.

Dr. Ron Lackey, Dana Point, stated that he wanted to protect the interests of the owners in Niguel Shores.

Council Member Anderson stated that nothing bothers her more than a law that is not being followed. She felt that the Council either needed to change, repeal or enforce the law. She added that right now the City is not being fair to the owners of short term rentals nor to their neighbors. She stated that she liked the idea of the City imposing a license fee rather than taxing. She added that she was curious as to what the costs would be if short term rentals were not allowed to enforce the law as opposed to the collection of a tax. She felt that the task force should review the issues.

Council Member Bishop agreed with Council Member Anderson. He stated that the quality of life for residents who live near short term rentals is diminished. He added that the City Council should come up with a plan for short term rentals and execute it.

Mayor Pro Tem Weinberg felt that the two issues should be split; one is the TOT and the other is deciding whether to approve the use of vacation rentals and in what zones. He stated that in some respects, the vacation rentals were competing with the hotels and they should be on an equal playing field.

Council Member Anderson asked if the City were to accept taxes from what is currently an illegal use at this point, wouldn't the City be saying that it was legal then?

City Attorney Munoz replied that he did not think the City should collect the tax at all if the Council is going to take the position that they don't want to explore this.

Council Member Anderson asked if the Council was not interested in allowing short term rentals across the city just in certain areas but we receive taxes from someone who is not in an approved area, would that be a problem.

City Attorney Munoz replied that he was comfortable if the Council were to provide direction tonight that on a temporary basis while the City was analyzing whether or where to allow short term rental uses are to occur, the City collects the tax from this use then later came back if we decide not to allow that use in that area that the City could defend it. He stated that he would not be comfortable if the City does not address the issue at all and just start collecting the tax. He added that he would also not be comfortable if the City were to collect the tax but not come back in a relatively defined period of time, it would take a long time to implement a Zoning Ordinance because of the need to receive Coastal Commission approval. He stated that if it were something that the Council would like to pursue then staff could come back within six months with recommendations.

City Manager Chotkevys suggested that this issue be sent back to the Planning Commission for a series of Public Hearings and have the Commission provide a recommendation to the City Council.

Mayor Bartlett stated that she agreed with City Manager Chotkevys in that there needs to be a thorough vetting of this issue with the community.

Council Member Anderson stated that she would support sending this issue to the Planning Commission, but that there needed to be very clear direction that they need to be looking at enforcing, changing, or repealing the law. She added that she would also like to see some data provided to the Commission indicating the costs to enforce and licensing versus taxes. She stated that the focus needs to be on cleaning up the City's Zoning and Municipal Codes as well as enforcing it or finding a way to allow the use.

City Manager Chotkevys stated that short term rentals are subject to paying the Transient Occupancy Tax and what the City has tried to do was come up with a grace period where we can hold them to the same standard as our hoteliers. He added that input is needed from the hoteliers regarding the tax issue to see what their response is because they are a stakeholder in this also. He felt that the Municipal Code would need to be amended.

Mayor Bartlett stated that at this point she felt comfortable in directing staff to hold some extensive public outreach to receive input from the community on this issue. She added then staff could make a recommendation to the Planning Commission and have them vet the issue through the Planning Commission.

City Manager Chotkevys clarified that the Planning Commission would be holding the Public Hearings.

Council Member Schoeffel stated that he endorses the City Manager's idea. He added that he would expect that staff would not only look at similar coastal areas, but a variety of other communities.

Mayor Pro Tem Weinberg stated that he did not feel comfortable in allowing the short term rentals to continue without paying the taxes.

Council Member Bishop stated that he was hoping the Planning Commission could address this issue quickly and he recommended that the list of participants and attendees from 2007 be used to notify those that were interested. He added that he would prefer to not collect TOT until the process has been completed.

IT WAS MOVED BY COUNCIL MEMBER SCOTT SCHOEFFEL, SECONDED BY MAYOR LISA A. BARTLETT, RECEIVE AND FILE THIS REPORT, NOT TO START THE COLLECTION OF TRANSIENT OCCUPANCY TAX, AND ASK THE PLANNING COMMISSION TO TAKE APPROPRIATENESS OF USE CONSISTENT WITH CITY COUNCIL DISCUSSION FROM 2007 AND 2009, USING COMPARATIVE DATA, TO HOLD A SERIES OF PUBLIC MEETINGS AND PROVIDE DIRECTION TO THE CITY COUNCIL WITHIN 90 DAYS.

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

**28. COMMUNITY OPINION SURVEY REGARDING COMMUNITY SERVICES IN DANA POINT**

City Manager Chotkevys provided a staff report.

Mayor Bartlett recommended that Council Member Anderson and herself be appointed to assist with the process.

IT WAS MOVED BY COUNCIL MEMBER JOEL BISHOP, SECONDED BY MAYOR PRO TEM STEVEN WEINBERG, AUTHORIZE STAFF TO RELEASE THE REQUEST FOR PROPOSAL (RFP) TO RECEIVE PROPOSALS FROM QUALIFIED CONSULTANTS TO DEVELOP AND CONDUCT A STATISTICALLY VALID COMMUNITY OPINION SURVEY; AND DESIGNATED MAYOR BARTLETT AND COUNCIL MEMBER ANDERSON TO ASSIST WITH THE RFP EVALUATION PROCESS, CONSULTANT RECOMMENDATION AND SURVEY DEVELOPMENT.

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

## **NEW BUSINESS**

### **29. VOLUNTARY PROGRAM TO REDUCE THE USE OF STYROFOAM AND PLASTIC BAGS**

City Manager Chotkevys provided a staff report.

Nichole Chambers, Dana Point Chamber of Commerce, stated that they support this voluntary program to reduce styrofoam and plastic bags. She felt that businesses should not be penalized for habits of their consumers and that educating businesses to educate their customers would be the best route.

Sandie Howard, Capistrano Beach, representing the Earth Ocean Society and stated that they support the discontinued use of styrofoam and plastic bags with some suggestions. She felt that a voluntary program may have little impact and that Dana Point should ban the use of these products.

Council Member Anderson suggested that businesses charge their customers for the plastic bags if they don't bring their own bags. She would like to challenge the Chamber and the businesses to see what they can do.

Council Member Bishop stated that a voluntary program is only as good as its participation. He asked if staff was going to quantify the results.

Director of Public Works and Engineering Fowler replied that the survey that was attached to the staff report lists the restaurants and what they are doing now so we do have a measurable baseline.

City Manager Chotkevys suggested that staff review this program in six months to see how effectively staff can work with the Chamber and the business community to see how we can implement the program.

Mayor Pro Tem Weinberg stated that if this program is voluntary he wants measurable end-user goals of how much trash is taken out of the drains and how many bags are taken off the trees.

Council Member Schoeffel stated that a voluntary program is a rational place to start and he agrees that the real problem is educating the end user. He also agreed that there should be an objective and subjective way of reviewing this program six months from now.



City Attorney Munoz stated that an Environmental Impact Report would have to be completed prior to imposing a mandatory program.

Mayor Bartlett felt that the mandatory approach would not work especially in this economy. She suggested that the hotels provide reusable bags free to their incoming visitors for their use. She committed to writing her first Friday article in the Dana Point Times covering this specific issue. She felt that a voluntary program like this was a great start.

Council Member Bishop stated that this would be a great marketing idea for the hotels to have their names on the reusable bags.

City Manager Chotkevys stated that staff will work with the Council's discussion tonight and will look at other innovative ways of measuring the success of the program.

IT WAS MOVED BY COUNCIL MEMBER LARA ANDERSON, SECONDED BY MAYOR LISA A. BARTLETT, ADOPT **RESOLUTION 09-07-27-08** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, IMPLEMENTING THE VOLUNTARY REDUCTION OF PLASTIC BAGS AND THE USE OF FOOD SERVICE ITEMS COMPRISED ON EXPANDABLE POLYSTYRENE (STYROFOAM) WITHIN LOCAL RESTAURANTS, RETAILERS, CITY FACILITIES, AND CITY-SPONSORED EVENTS.*

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

### **30. CONSIDERATION OF PROPOSAL TO ALLOW PUBLIC TO RIDE FUNICULAR FREE OF CHARGE**

Council Member Bishop recused himself from this item due to a potential conflict of interest in that his home is within 500' of the funicular and left the Council Chambers.

City Manager Chotkevys provided a staff report.

Mayor Pro Tem Weinberg asked if the City accepts their offer of providing free rides on the funicular and we would be splitting the costs; would this be in perpetuity and would the City then be responsible for the replacement cost of the funicular.

City Attorney Munoz replied that the details would be identified in an agreement that would come back to the City Council but that Headlands Reserve LLC was looking for a perpetual agreement in the sense that it

would be in place as long as the funicular was in place. He stated that staff has not gotten to the level of detail regarding the replacement of the funicular but he assumed that the agreement would include the operating, maintenance, and replacement costs.

Kevin Darnall, Headlands Reserve LLC, felt that the proposal was very straightforward and that they were proposing that the funicular be operated for free. He stated that CFD tax is already established which provides for a sinking fund that will allow for the replacement cost of the funicular. He added that it also included the costs for daily maintenance and operation. He stated that they support staff's recommendation.

Council Member Anderson stated that if riding the funicular was free, then there would be no need for the turnstiles. She felt that the turnstiles looked medieval and was concerned with their appearance.

City Manager Chotkevys replied that he was sure that those pictures were just examples of turnstiles and that staff would be able to find something more tasteful. He reminded the Council that the turnstiles were to regulate the traffic of the funicular.

Council Member Anderson asked if the funicular was free, how do you prevent someone from riding the funicular up and down all day long?

City Manager Chotkevys replied that there would be no way to stop them.

Council Member Schoeffel asked how the ridership has been calculated. He was concerned that the sinking fund would not be enough to cover the costs of the funicular.

Assistant City Manager Killebrew replied that the funicular is essentially an elevator and that the maintenance proposals the City has received have been based on that type of ridership. He stated that the estimated ridership has been calculated at a maximum of eight (8) passengers every five (5) minutes.

Mayor Pro Tem Weinberg felt that there should be some sort of nuisance charge to limit the ridership to those who really need it.

Mayor Bartlett stated that there were many ways to get to the beach and that if the funicular was free that the public would not use the other accesses that have been provided.

Council Member Anderson stated that if there must be a charge to ride the funicular that she was concerned with the appearance of the turnstiles and felt that more attractive turnstiles must be found or an alternative way of collecting the fee.

IT WAS MOVED BY MAYOR PRO TEM STEVEN WEINBERG, SECONDED BY COUNCIL MEMBER SCOTT SCHOEFFEL, TO NOT APPROVE THE PROPOSAL TO RIDE THE FUNICULAR FREE OF CHARGE AT THIS ITEM

AND ASKED STAFF TO WORK WITH HEADLANDS RESERVE LLC TO USE MORE ELECTRONICS INSTEAD OF UNATTRACTIVE IRON FOR THE INSTALLATION OF THE TURNSTILES.

The motion carried by the following vote:

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

NOES: None

ABSTAIN: Council Member Joel Bishop

Council Member Bishop returned to the Council Chambers.

## **PUBLIC COMMENTS**

There were no additional Public Comments.

## **STAFF REPORTS**

City Manager Chotkevys commended the City Council for their foresight when they put together a budget two (2) years ago and the most recent budget that takes into account everything the State has thrown at the City. He stated that the Council had reserved those monies and that it appears that the City will be able to weather the storm because of their planning and conservative fiscal policy.

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

Council Member Schoeffel reported that he had attended the IRC meeting in June and the CJPIA annual meeting with the City Manager on July 15th. He stated that the 4th of July was very enjoyable and he thanked staff for their efforts with the concerts in the park.

Council Member Anderson stated that she had turned in a list of her meetings attended to the City Clerk. She reported that she has been contacted by members of the public and they were very impressed with the concerts in the park. She encouraged everyone to check the community calendar for upcoming events. She thanked everyone for the well wishes she has received for baby Shay.

Council Member Bishop stated that he had turned in his list of meetings attended to the City Clerk. He added that the concerts in the park have been fabulous and reminded everyone that the movies in the park were to start up again in August.

Mayor Pro Tem Weinberg stated that he had turned in his list of meetings attended to the City Clerk. He reported that on August 5th at 10:00 a.m. the new Fire Chief will be pinned and if anyone was interested in attending, the event will take place at the headquarters on Jamboree. He encouraged everyone to enjoy their summer.

Mayor Bartlett reported that she has turned in her list of meetings attended to the City Clerk. She highlighted the following:

She had attended numerous TCA meetings, Ocean Institute Board of Directors meetings, and held her regular office hours.

She had been elected to represent the 5th District for the Orange County Division Board of Directors of the California League of Cities.

June 12 - attended and provided a Certificate of Recognition for the Coffee Importers' 30th Anniversary.

July 16 - guest speaker at the Lantern Bay Estates Homeowners Association and provided an update on Dana Point's current and future projects, activities and events, plus a current snapshot of the financial and budget status for the City.

She stated that during the balance of July and August, the City will continue with the concerts in the Park and also movies in the park in August. She wished everyone an enjoyable summer and encouraged everyone to partake in the many events that the City offers over the next month. She stated that the weather has been perfect and that everyone should take advantage to stroll the beaches, parks, trails, and the harbor.

## **ADJOURNMENT**

There being no further business before the City Council at this session, Mayor Bartlett declared the meeting adjourned at 9:16 p.m. and announced that the next Regular Meeting of the City Council will be held on August 24, 2009, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

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KATHY M. WARD  
CITY CLERK

APPROVED AT THE MEETING OF AUGUST 24, 2009

Meetings Attended Since the Last City Council Meeting:

**Mayor Lisa Bartlett**

Attended numerous TCA meetings, Ocean Institute Board of Directors meetings, and held regular office hours.

She has just been elected to represent the 5<sup>th</sup> District for the Orange county Division board of Directors of the California League of Cities.

- June 11 - California Coastal Commission Hearing for the Dana Point Harbor Plan. This hearing has been re-scheduled to October, 2009 in Oceanside.
- June 12 - Attended and provided a Certificate of Recognition for the coffee Importers' 30<sup>th</sup> Anniversary.
- June 13 - Ocean Institute Build a Boat Event.
- June 16 - Investment Review Committee meeting
- June 17 - South County Seniors recognition event for Supervisor Pat Bates' work in the 5<sup>th</sup> District.
- June 18 - Graduation ceremony at Dana Hills High School.
- June 21 - First concert in the park and provided welcome comments to the 3,000+ people in attendance.
- June 22 - Dana Point Historical Society BBQ and Picnic.
- June 25 - California League of Cities Environmental quality Policy Committee meeting in Sacramento.
- June 30 - Farewell luncheon and provided a City Proclamation to OCFA Chief Chip Prather at OCFA headquarters.
- July 1 - San Diego Regional Water quality Control Board meeting and spoke at public comments about permitting issues. Also attended the City of Dana Point staff BBQ at City Hall.
- July 3 - Ribbon cutting ceremony for a new Dana Point business – Steer Crazy in the Capistrano Beach Surf Center.
- July 4 - Police Service Command Center to view the security set up for the July 4<sup>th</sup> weekend and also viewed the fireworks from the Marriott.
- July 8 - Provided a Certificate of Recognition to fellow Rotarian Linda Hess as the outgoing President of the Monarch Beach Sunrise Rotary club.
- July 16 - Guest speaker at the Lantern Bay Estates Homeowners Association and provided an update on Dana Point's current and future projects, activities and events, plus a current snapshot of the financial and budget status for the City.
- July 18 - OCFA Chief Chip Prather's farewell party at Doheny State Beach.
- July 23 - South County Association of Mayor's breakfast meeting in Aliso Viejo at its new conference center.
- July 24 - Performed in the South Orange County Regional Chamber Ball.

Upcoming Events:

During the balance of July and August, we will continue with our wonderful concerts in the park. Also, due to the popularity of our Friday night movies in the park in June, we will be adding more movie dates in August for the community to enjoy.

She wishes everyone a very enjoyable summer and encouraged you to partake in our many events that we offer over the next month or so. The weather has been perfect so take advantage and stroll the beaches, the parks, the trails, and the Harbor.

**Mayor Pro Tem Steven Weinberg**

- June 10 - Vector Control Budget and Finance meeting  
OCFA Budget and Finance Meeting
- June 12 - Coffee Importers 30<sup>th</sup> Anniversary
- June 17 - Lighthouse Society Presentation
- June 18 - Vector Control Board of Directors meeting  
Dana Point Chamber of Commerce Mixer
- June 25 - OCFA Board of Directors Meeting
- June 30 - OCFA Chip Prather's retirement BBQ
- July 7 - DP Library Task Force
- July 8 - OCFA Budget and Finance Meeting
- July 9 - TCA Board of Directors Meeting
- July 16 - Vector Control Budget and Finance meeting  
Vector Control Board of Directors meeting  
Dana Point Chamber of Commerce Mixer
- July 18 - OCFA Chip Prather's retirement BBQ
- July 23 - OCFA Board of Directors Meeting

**Council Member Lara Anderson**

- May 13 - Library Subcommittee
- May 22 - Bridge dedication
- July 6 - Coastal Animal Services Authority JPA meeting