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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 8, 2010**

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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 Weinberg 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 Steven Weinberg  
Mayor Pro Tem Scott Schoeffel  
Council Member Lara Anderson  
Council Member Lisa Bartlett  
Council Member Joel Bishop  
Absent: None

**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), (1 case)

City Attorney Munoz asked for the City Council's approval to add an additional item to Closed Session. He stated that he has received information regarding a liability situation and that he needs to brief the Council. He added that if the item were added that it would be considered Anticipated Litigation.

IT WAS MOVED BY MAYOR PRO TEM SCHOEFFEL, SECONDED BY COUNCIL MEMBER BISHOP, THAT THE CITY COUNCIL ADD AN ADDITIONAL ANTICIPATED LITIGATION ITEM TO THE CLOSED SESSION.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

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

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**RECONVENE CITY COUNCIL MEETING - CALL TO ORDER**

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

STAFF PRESENT: Douglas C. Chotkevys, City Manager; Patrick Munoz, City Attorney, Kathy Ward, City Clerk, Mike Killebrew, Assistant City Manager; Mike Rose, Director of Disaster Preparedness; Lt. Mark Levy, Police Services; John Tilton, City Architect; Brad Fowler, Director of Public Works/Engineering; Lynn Kelly, Management Analyst; Kevin Evans, Director of Community Services and Parks; Christy Teague, Economic Development Manager; Mark Sutton, Building Official; Jackie Littler, Executive Secretary; DyAnne Weamire, Administrative Secretary; and Bobbi Ogan, Deputy City Clerk.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Munoz stated that he had no announcement.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Judy Brandmeier.

**INVOCATION**

The Invocation was provided by Chaplain Jeff Herschel from OCFA Battalion 5.

**PRESENTATIONS AND PROCLAMATIONS**

November Business of the Month - JC Beans Coffee House

Management Analyst Kelly provided a PowerPoint presentation detailing the JC Beans Coffee House. She reported that JC Beans employ 15 people and their drive through is open at 4:00 a.m. and the store is open from 5:00 a.m. to 8:00 p.m. every day. J.C. Beans regularly holds events that support The Friends of the Dana Point Library. She stated that *Children's Story Time Thursdays* helps support and promote local reading programs in the community. Mayor Weinberg presented a certificate of recognition to Russ Chilton and his daughter Cozette Chilton for JC Beans being selected the featured business of the month, November 2010.

Moulton Niguel Water District 50th Anniversary Presentation

Mayor Weinberg presented Larry Lizotte with a Proclamation in celebration of Moulton Niguel Water District's 59th anniversary.

Recognition of Ingrid McGuire, Board of Director for South Coast Water District

Mayor Weinberg presented Ingrid McGuire a Proclamation in honor of her 25 years of service to the community.

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**CONSENT CALENDAR**

Council Member Anderson removed Item 14 from the Consent Calendar and Council Member Bartlett abstained from voting on Item 19 due to a potential conflict of interest.

IT WAS MOVED BY COUNCIL MEMBER LARA ANDERSON, SECONDED BY MAYOR PRO TEM SCOTT SCHOEFFEL, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON CONSENT CALENDAR WITH THE EXCEPTION OF ITEM 14.

The motion carried by the following vote:

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

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, OCTOBER 25, 2010**

APPROVED THE MINUTES.

**3. PLANNING COMMISSION MEETING MINUTES, OCTOBER 18, 2010**

RECEIVED AND FILED.

**4. PLANNING COMMISSION ACTIONS, MEETING OF NOVEMBER 1, 2010**

RECEIVED AND FILED.

**5. YOUTH BOARD MEETING MINUTES, OCTOBER 7, 2010**

RECEIVED AND FILED.

**6. TRAFFIC IMPROVEMENT SUBCOMMITTEE MINUTES, MAY 19, 2010**

RECEIVED AND FILED.

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**7. OCEAN WATER QUALITY SUBCOMMITTEE MINUTES, JUNE 22, 2010**

RECEIVED AND FILED.

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

RECEIVED AND FILED.

**9. CITY TREASURER'S REPORT, SEPTEMBER 2010**

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF SEPTEMBER 2010.

**10. CLAIMS AND DEMANDS**

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

**11. HEALTH PLAN PROVISIONS FOR CALENDAR YEAR 2011**

ADOPTED **RESOLUTION 10-11-08-01** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, MODIFYING HEALTH BENEFIT PLAN ALLOWANCES FOR ALL ELIGIBLE REPRESENTED AND NON-REPRESENTED CLASSIFICATIONS.*

**12. MISCELLANEOUS STORM DRAIN REPAIRS IN CAPISTRANO BEACH**

ACCEPTED THAT THE MISCELLANEOUS STORM DRAIN REPAIRS IN CAPISTRANO BEACH PROJECT (CIP #1188) WERE COMPLETED AND TRANSFERRED PROJECT SAVINGS FROM THE PROJECT AS NOTED IN THE FISCAL SECTION.

**13. DISPOSITION OF NON-ESSENTIAL CITY RECORDS**

APPROVED THE 2010 DISPOSITION OF NON-ESSENTIAL CITY RECORDS IN ACCORDANCE WITH CALIFORNIA STATE LAW AND THE CITY'S APPROVED RECORDS RETENTION SCHEDULE AND ADOPTED **RESOLUTION 10-11-08-02** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AUTHORIZING THE DISPOSITION OF CERTAIN INACTIVE CITY RECORDS AS PROVIDED BY SECTION 34090 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.*

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**14. PROPOSED WATER FOUNTAIN/PUBLIC ART AT LA PLAZA PARK**

City Council Member Anderson had removed this item from the Consent Calendar.

City Manager Chotkevys provided a staff report.

Council Member Anderson stated that she loved the design and the water feature that has been proposed but that she was concerned that the fountain could be defiled by Hennessy's patrons and asked how the City will ensure that the fountain was not vandalized.

City Manager Chotkevys replied that the City has a very good police presence in La Plaza and that he was confident that they will be able to keep the area under control.

Council Member Anderson asked how deep the water will be as she was concerned that transients may use the fountain for washing.

City Architect Tilton replied that the water will be no more than 18 inches deep and that the surround will be about 18 inches high.

IT WAS MOVED BY COUNCIL MEMBER JOEL BISHOP, SECONDED BY COUNCIL MEMBER LISA BARTLETT, APPROVE THE PROPOSED WATER FOUNTAIN/PUBLIC ART PROJECT FOR LA PLAZA PARK IN THE CITY'S TOWN CENTER.

The motion carried by the following vote:

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

NOES: None

**15. SECOND READING AND ADOPTION BY REFERENCE THE CALIFORNIA CODES OF REGULATIONS TITLE 24, PARTS 1-12, KNOWN AND DESIGNATED AS THE 2010 EDITION OF THE CALIFORNIA BUILDING CODE, 2010 EDITION OF THE CALIFORNIA RESIDENTIAL CODE, 2010 EDITION OF THE CALIFORNIA ELECTRICAL CODE, 2010 EDITION OF THE CALIFORNIA PLUMBING CODE, 2010 EDITION OF THE CALIFORNIA MECHANICAL CODE, 2010 EDITION OF THE CALIFORNIA ADMINISTRATIVE CODE, 2010 EDITION OF THE CALIFORNIA REFERENCE STANDARDS CODE, 2010 EDITION OF THE CALIFORNIA ENERGY CODE, 2010 EDITION OF THE CALIFORNIA GREEN BUILDING STANDARDS CODE, 2010 EDITION OF THE CALIFORNIA HISTORICAL BUILDING CODE, 2010 EDITION OF THE CALIFORNIA EXISTING BUILDING CODE AND THE 2010 EDITION OF THE CALIFORNIA FIRE CODE, MAKING AMENDMENTS THERETO, AND RELATED ACTIONS**

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HELD A SECOND READING AND ADOPTED **ORDINANCE 10-11** ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTERS 8.02, 8.12, 8.14, 8.16, 8.20, 8.24, 8.26, 8.28, 8.30, 8.32, 8.34, 8.36, 8.38 AND ADDING CHAPTERS 8.03 AND 8.11 OF TITLE 8 OF THE DANA POINT MUNICIPAL CODE ADOPTING BY REFERENCE THE CALIFORNIA CODES OF REGULATIONS TITLE 24, PARTS 1-12, KNOWN AND DESIGNATED AS THE 2010 EDITION OF THE CALIFORNIA BUILDING CODE, 2010 EDITION OF THE CALIFORNIA RESIDENTIAL CODE, 2010 EDITION OF THE CALIFORNIA ELECTRICAL CODE, 2010 EDITION OF THE CALIFORNIA PLUMBING CODE, 2010 EDITION OF THE CALIFORNIA MECHANICAL CODE, 2010 EDITION OF THE CALIFORNIA ADMINISTRATIVE CODE, 2010 EDITION OF THE CALIFORNIA REFERENCE STANDARDS CODE, 2010 EDITION OF THE CALIFORNIA ENERGY CODE, 2010 EDITION OF THE CALIFORNIA GREEN BUILDING STANDARDS CODE, 2010 EDITION OF THE CALIFORNIA HISTORICAL BUILDING CODE, 2010 EDITION OF THE CALIFORNIA EXISTING BUILDING CODE AND THE 2010 EDITION OF THE CALIFORNIA FIRE CODE, MAKING AMENDMENTS THERETO, AND RELATED ACTIONS.*

- 16. SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 15.10 OF THE MUNICIPAL CODE (STORM WATER/SURFACE RUNOFF WATER QUALITY ORDINANCE) TO ADDRESS WATER QUALITY REGULATION CHANGES REQUIRED IN THE NEW SAN DIEGO REGIONAL WATER QUALITY BOARD NPDES PERMIT**

HELD A SECOND READING AND ADOPTED **ORDINANCE 10-12** ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 15.10 OF THE MUNICIPAL CODE (STORM WATER/SURFACE RUNOFF WATER QUALITY ORDINANCE) TO ADDRESS SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD (SDRWQCB) WATER QUALITY REGULATION CHANGES.*

- 17. INTERVENTION SPECIALIST PROGRAM**

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.

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**18. FISCAL YEAR 2010-11 PROPOSED BUDGET ADJUSTMENTS**

AMENDED THE FY2010-11 ("FY11") GENERAL FUND OPERATING BUDGET AND HEADLANDS CFD MAINTENANCE FUND OPERATING BUDGET BY AUTHORIZING THE APPROPRIATION OF UNENCUMBERED FUNDS AND MAKING ADJUSTMENTS TO CERTAIN OTHER FY11 REVENUES AND EXPENDITURES AS ENUMERATED IN THIS REPORT.

**19. AMENDMENT TO EXISTING APPROVED COOPERATIVE AGREEMENT WITH THE ORANGE COUNTY TRANSPORTATION AUTHORITY IN CONJUNCTION WITH THE RAIL HIGHWAY CROSSING ENHANCEMENT PROGRAM FOR BEACH ROAD**

Council Member Lisa Bartlett announced that she would abstain from voting on this item due to a potential conflict of interest.

APPROVED THE SECOND AMENDMENT TO THE COOPERATIVE AGREEMENT WITH THE ORANGE COUNTY TRANSPORTATION AUTHORITY (OCTA) AND AUTHORIZED THE CITY MANAGER TO EXECUTE THE AMENDMENT AND APPROVE ANY SUBSEQUENT AMENDMENTS.

The item was approved by the following vote:

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

ABSTAIN: Council Member Lisa Bartlett

**20. AWARD OF CONTRACT TO RJ NOBLE COMPANY FOR THE CONSTRUCTION OF THE ANNUAL ROADWAY RESURFACING PROJECT FY 10/11 PHASE II**

APPROVED THE CONSTRUCTION CONTRACT DOCUMENTS REQUIRED FOR THE "ANNUAL ROADWAY RESURFACING PROJECT FY 10/11 PHASE 2", APPROVED AWARD OF A CONTRACT TO RJ NOBLE COMPANY FOR CONSTRUCTION OF THE ANNUAL ROADWAY RESURFACING PROJECT FY 10/11 PHASE 2, PROVIDING THAT THE CITY MANAGER OR HIS DESIGNEE SIGNS AND ADMINISTERS SUBJECT CONTRACT AND MAY APPROVE ADDITIONAL PAYMENT FOR CHANGE ORDERS, CONTINGENCIES, CONSTRUCTION MANAGEMENT SERVICES, SOILS AND MATERIAL TESTING, AND CONSTRUCTION DESIGN SUPPORT FOR THE PROJECT AS NOTED IN THE FISCAL IMPACT SECTION, AND TRANSFERRED FUNDING AS NOTED IN THE FISCAL IMPACT SECTION.

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**21. AGREEMENT FOR RECORDS MANAGEMENT/DOCUMENT IMAGING SYSTEM AND SERVICES**

AUTHORIZED THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH SIRE TECHNOLOGIES FOR THE PURCHASE, IMPLEMENTATION AND MAINTENANCE SERVICE FOR A NEW RECORDS MANAGEMENT AND DOCUMENT IMAGING SYSTEM AND AUTHORIZED THE ACQUISITION OF ACCOMPANYING EQUIPMENT, AND CONTRACT FOR NECESSARY INFORMATION TECHNOLOGY CONSULTING SERVICES WITH SIGMANET.

**PUBLIC COMMENTS**

Steve Balsamo, Dana Point, spoke regarding the recent bluff failures in Capistrano Beach. He felt that there wasn't anything being done to protect the residents on the bluff.

City Manager Chotkevys stated that it was his understanding that there was a solution recommended to the homeowners and that the homeowners chose not to pursue that.

City Attorney Munoz replied that the City had held a series of meetings beginning in 2005 over a course of about eighteen months where the community was brought together and City staff spoke the bluff top homeowners. He stated that it was important to remember that the bluff property is private property and that it would be a gift of public funds if the City were to fix privately owned property. He added that the property owners not only have a right but a responsibility to protect their property. He stated that the City had outlined in the various sessions that were held a whole host of different ideas that the property owners could pursue. He added that one of the ideas was for the homeowners to create a Geological Hazard Abatement District which is a financing mechanism whereby the property owners can come up with the financing for the stabilization efforts. He stated that City staff routinely communicates with property owners the new technology that is created to monitor slab leaks and pool leaks and those types of issues. He stated that most of the failures that the City sees are a result of property owners introducing water onto the slopes and that he was not sure what caused the failure over Labor Day.

Director Fowler clarified that the bluff failure that had happened over Labor Day was the result of the landscaper turning on the sprinkler system and not hand-watering as he had been instructed to do by the homeowner. He stated that there was a leak in the sprinkler system.

City Attorney Munoz stated that as a result of causing the failure, the property owner was responsible for the cost of the clean up. He added that over the years there have been pool leaks and the City has required the property owners to pay for those as well. He stated that it is the goal of City staff to educate the public that owns property on the bluff to understand what their options are and the things they can do to protect their



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property. He added that through the course of the community meetings, City staff had discussed adopting rules and regulations that would apply specifically to the blufftops that would prevent certain types of landscaping, plantings, and Code Enforcement possibilities. He stated that the property owners indicated that they did not want the City to be involved and take those kind of heavy-handed approaches and they preferred to address the issues on a case-by-case basis.

Director Fowler stated that copies of the two letters that had been mailed out to the blufftop owners were available for anyone who was interested. He added that if anyone has any questions, to contact Public Works and staff would be happy to talk with them and elaborate more on what the options are. He stated that in all of the instances that staff has recently found, it was a blufftop owner issue where they had introduced water into their property on the backside and that has contributed to the slope failure. He stated that it has been staff's efforts to try and educate and work with the property owners. He added that the latest slide did happen during a rain event, but in staff's follow-up investigation to ensure that things were safe; staff had identified additional cracking and brought that to the property owner's attention. He stated that the property owner had taken immediate action over the course of several days to rectify that and remove the hazard on the bluff. He added that property owners can take action but that there are some Coastal Commission restrictions.

City Manager Chotkevys thanked Engineering and the Planning staff in processing the emergency Coastal Development Permit to allow the property owner to clean things up.

Berenika Schmidt and Karin Schnell, Dana Point, announced the upcoming 2011 concert series. They thanked the City Council for supporting their efforts and stated that the concerts will take place on Thursdays and Fridays as well as two Sundays at St. Edwards Church. They added that a different visual artist will be exhibiting their work at each concert.

## **PUBLIC HEARINGS**

### **22. GENERAL PLAN AMENDMENT GPA10-0001 TO THE LAND USE AND CONSERVATION/OPEN SPACE ELEMENTS ADDRESSING WATER QUALITY REGULATION CHANGES AS PART OF THE NEW MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4) PERMIT**

City Manager Chotkevys provided an introduction of the item and City Architect Tilton provided a summary of the amendment to the General Plan.

Council Member Bartlett left the Council Chambers at 6:37 p.m.

Council Member Anderson asked what the ramifications would be if the City Council did not approve the GPA.

City Architect Tilton replied that the Regional Board could fine the City.

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IT WAS MOVED BY COUNCIL MEMBER LARA ANDERSON, SECONDED BY MAYOR PRO TEM SCOTT SCHOEFFEL, TO CONDUCT A PUBLIC HEARING AND ADOPT **RESOLUTION 10-11-08-03** APPROVING GENERAL PLAN AMENDMENT GPA10-0001 ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING A GENERAL PLAN AMENDMENT (GPA10-0001) AMENDING THE LAND USE AND CONSERVATION/OPEN SPACE GENERAL PLAN ELEMENTS TO ADDRESS WATER QUALITY REGULATION CHANGES AS PART OF THE NEW MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4) PERMIT.*

The motion carried by the following vote:

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

NOES: None

ABSENT: Council Member Lisa Bartlett

### **UNFINISHED BUSINESS**

#### **23. DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT ANNUAL REPORT AND RENEWAL FOR 2011**

City Manager Chotkevys introduced the item and Economic Development Manager Teague provided a staff report and PowerPoint presentation.

Mayor Weinberg opened the Public Comments.

Bruce Brainerd, General Manager for Ritz Carlton, thanked the City Council for their support of the Tourism Business Improvement District over the past year. He stated that the City Council's support of renewal of the Tourism Business Improvement District was very important to the hotels and to drive Dana Point awareness as a destination. He asked for the continued support of the Council.

Council Member Bishop asked if the Ritz Carlton had received any complaints on the \$3 assessment.

Bruce Brainerd replied that they had not received any complaints. He felt that their guests were accustomed to the assessment because most of the hotels up and down the coast have some form of Business Improvement District.

Jim Samuels, Dana Point Marriott Resort and Spa, stated that he supports the Tourism Business Improvement District and that he looks forward to the support of the City Council. He added that he had not received any complaints from guests regarding the assessment and felt that it was a very positive source of

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revenue to help keep the four big revenue generators for the City healthy as well as to help brand and market the City.

Council Member Anderson asked if anyone had lost any conventions due to the assessment.

Jim Samuels replied that the conventions had pre-booked in prior years and they were provided the option to not pay, but they paid. He felt that the assessment has been extremely successful.

City Manager Chotkevys clarified that this was not a Public Hearing and that the action before the Council tonight was a recommendation to adopt a Resolution confirming the annual report and declaring the intention of the City Council to continue the program and the assessment for the next calendar year. He added that the second recommendation was to set November 22, 2010 as the public hearing. He stated that he just wanted to be clear that this item was Unfinished Business. He thanked the hoteliers for their active participation because the City's success is a direct result of their work.

Jim Samuels acknowledged Council Member Bishop for his contributions as a Council Member and Mayor. He stated that Joel has been etched into the heart of Dana Point and that he appreciates everything he has done.

Kathy Barnum, Dana Point, encouraged the City Council to approve Item 23 and support the efforts of the Tourism Business Improvement District.

Mayor Weinberg closed the Public Comments.

Council Member Anderson asked if there was nothing to see yet and if it was a collection year only.

Economic Development Manager Teague replied that there was nothing yet, but there were some drafts which were being test marketed and the results will then be reported to the General Managers for consideration.

City Manager Chotkevys stated that the Tourism Business Improvement District was working hard with Agency 51 with brand promise, and that it was the staff's anticipation that by spring there will be something to present to the City Council before the launch.

Council Member Anderson stated that her concern wasn't so much the graphics but whether or not this program was working. She asked if there were any hard numbers that staff could share.

Economic Development Manager Teague replied that the revenue collected for the first nine months of 2010 is \$632,850 dollars, and the expenditures to date have been \$92,057 with a pending an expenditure to complete the Agency 51 contract phase that the City Council had approved. The current balance in the account is just over \$540,000.

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City Manager Chotkevys stated that it was important to point out that the Tourism Business Improvement District was on track with the budget and saving money for the launch. He added that they will be able to start tracking the 3rd quarter of 2011. He asked the City Council to keep in mind that we are recovering from a terrible economy and that 2012 will be better.

Johnny So, General Manager of the St. Regis Dana Point, stated that the Transient Occupancy Tax numbers were pretty drastic and that the hotels can not afford to not collect the marketing fee to promote Dana Point.

Council Member Anderson asked if the City Council could see a detailed breakdown of the expenditures in the next report and whether the General Managers could elect to discontinue this program at any time.

City Council Chotkevys replied that the General Managers could make a recommendation to discontinue.

City Attorney Munoz clarified that this was a private-public partnership and that if the General Managers wanted to stop collecting the assessment, the City would allow it.

Council Member Bishop stated that it was important for the City to do this and that he supports the item.

City Manager Chotkevys stated that the assessment goes beyond Tourism Business Improvement District process and that these properties were very important. He added that the City had worked very closely with the Marriott to get their addition completed as it was very important to the City.

Mayor Pro Tem Schoeffel felt that there was a misunderstanding for some as to what a Business Improvement District was and what the law was that created the public-private partnership. He asked for clarification of the statement "since a BID fee is a benefit assessment and not a tax, BIDs are able to pay for programs and activities without relying on public funding".

Economic Development Manager Teague replied that the Business Improvement District fee was a marketing or user fee and that fee goes into separate account that is directed by an advisory board under the supervision of the City. She stated that staff was sure that what the board was doing as the City Council had mandated which is marketing activities to promote Dana Point as an overnight destination. She added that these were not City tax payer funds, but fees paid by visitors.

City Manager Chotkevys clarified that this was not a tax but the businesses have asked to have an assessment placed on their patrons so they could promote tourism in Dana Point.

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Council Member Bishop asked if this was similar to the Geological Assessment District.

City Manager Munoz replied that the Geological Hazard Abatement District is for property owners who don't have a funding mechanism to pay for the costs to improve their property. He stated that similarly in a situation like this, we have the hotel industry coming together who would like to have money to use for specific marketing purposes. He added that they have to come to the City to take advantage of the financing mechanisms that is set forth in the state law that allows them to achieve this.

Mayor Pro Tem Schoeffel asked what portion of the City's revenues is being benefited by this particular self assessment.

Assistant City Manager Killebrew replied that the hotel properties generate about 50% of the City's revenue and the four major hotels are about 90% of that 50%.

Mayor Pro Tem Schoeffel stated that he would also like to see a breakdown of the expenses of the Tourism Business Improvement District.

Mayor Weinberg stated that the City's livelihood is dependent upon the tourist industry.

Mayor Pro Tem Schoeffel read from the California Streets and Highways Code, Section 36501 known as the Parking and Business Improvement Area Law of 1989.

IT WAS MOVED BY MAYOR PRO TEM SCOTT SCHOEFFEL, SECONDED BY COUNCIL MEMBER JOEL BISHOP, THAT THE CITY COUNCIL ADOPT **RESOLUTION 10-11-08-04** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, CONFIRMING THE 2011 ANNUAL REPORT AND DECLARING THE INTENTION OF THE CITY COUNCIL TO CONTINUE THE PROGRAM AND ASSESSMENTS FOR THE 2011 CALENDAR YEAR FOR THE DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID); and*

SET THE DATE FOR PUBLIC HEARING FOR RENEWAL OF THE DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT FOR NOVEMBER 22, 2010.

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The motion carried by the following vote:

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

NOES: None

ABSENT: Council Member Lisa Bartlett

## **NEW BUSINESS**

There was no New Business.

## **PUBLIC COMMENTS**

There were no additional Public Comments received.

## **STAFF REPORTS**

City Manager Chotkevys reported that City Attorney Munoz did a great job representing the City in front of the California Supreme Court and articulating the City's position.

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

Council Member Bishop thanked all that have voted and stated that he has taken down the majority of his signs.

Council Member Anderson stated that a gift of public funds can not be done and she encouraged Mr. Balsamo to sit down with the City Attorney to discuss this issue. She reported that she had attended the SOSCA concert yesterday. She announced that the Pet Project Foundation *Santa Claus and Paws* will be held on Saturday, December 4th from 10:00 a.m. to 3:00 p.m. at Aegis in Capistrano Beach. She stated that for more information go to [www.petprojectfoundation.org](http://www.petprojectfoundation.org).

Mayor Pro Tem Schoeffel reported that he had attended two TCA meetings. He thanked everyone who came out for the SOSCA event yesterday at Lantern Bay Park. He thanked the Parks and Recreation Department for their service over the last six months.

Mayor Weinberg stated that he had the opportunity to present a woman at the Fountains a proclamation in celebration of her 100th birthday. He added that he had attended the SOSCA rock concert and felt that it was unbelievable what the kids had done. He thanked the Parks and Recreation Department for a great job. He announced that the Turkey Trot was 2-1/2 weeks away. He announced that there were two Veterans Day Memorial observances. The City was holding one at 10:00 a.m. in Strands Vista Park on November 11th. He added that active duty Marines would be the guest speakers and two plaques will be installed; one for the National Guard and one

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for the Merchant Marines. He stated that the other Veteran's Day Memorial service will be held at the Fountains at 3:00 p.m. He encouraged everyone to support our Veterans and buy a poppy.

**ADJOURNMENT**

There being no further business before the City Council at this session, Mayor Weinberg declared the meeting adjourned at 7:24 p.m. and announced that the next Regular Meeting of the City Council will be held on November 22, 2010, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.