

---

---

**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
FEBRUARY 4, 2011**

---

---

**CALL TO ORDER**

The Special Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Schoeffel at 1:01 p.m. in the Dana Point City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point.

**ROLL CALL**

PRESENT: Scott Schoeffel, Mayor  
Lara Anderson, Mayor Pro Tem  
Lisa Bartlett, Council Member  
William P. Brough, Council Member  
Steven H. Weinberg, Council Member

STAFF PRESENT: Douglas Chotkevys, City Manager; Patrick Muñoz, City Attorney; Kathy Ward, City Clerk; Michael Killebrew, Administrative Services Director; John Tilton, Architect/Planning Manager; Lt. Mark Levy, Chief of Police; Mike Rose, Director of Emergency Services and Disaster Preparedness; Mark Sutton, Building Official; Angela Duzich, Code Enforcement Officer and Jackie Littler, Executive Secretary.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by City Clerk Ward.

**PUBLIC COMMENTS**

There were no Public Comments.

**NEW BUSINESS**

**1. CONSIDERATION OF HIRING INDEPENDENT HEARING OFFICER TO CONDUCT APPEALS RELATED TO BUILDING OFFICIAL DETERMINATIONS**

City Attorney Munoz provided a staff report. He stated that there were marijuana facilities that were red tagged and utilities were shut off in Dana Point. The City ordered one of the facilities to cease operations for a lack of Certificate of Occupancy. Another facility had its Certificate of Occupancy revoked because the use that was approved was different than what was occurring. The Building Official conducted an investigation and determined immediate fire, life and safety issues exist and as a result of those findings, turned off the utilities and red tagged the locations.

He reported that appeals were filed by three properties, one appeal has been withdrawn and two appeals are pending at this time. He stated that under the Municipal Code, the City Council is the appeals board in hearing appeals by the

---

---

**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
FEBRUARY 4, 2011**

---

---

Building Official. He added that there was a concern that there could be an appearance of bias because of the pending litigation with the two dispensaries. He stated because of that and due to the City's desire to make sure that a fair hearing occurs, it is recommended that a Hearing Officer be hired to conduct the appeals and it would be someone independent, unrelated to the City. He stated that Section 601.1 of the California Abatement of Dangerous Building Code allows the Council, as the board of appeals, to appoint one or more hearing examiners to conduct the appeals.

He stated that we invited the dispensaries to participate in the selection process. The City sent them a "strike list" of retired judges that work at JAMS, a service where retired judges provide neutral judicial services to act as hearing officers. JAMS provided us the names of three former judges; two Superior Court judges and one Federal judge. He invited the two appealing dispensaries to strike (eliminate) one judge, the City would eliminate a judge and the remaining judge would be the judge hearing the appeal. The dispensaries declined to participate in that process. The City requested JAMS to randomly select one of the three judges and they selected former retired Judge James Smith to conduct the appeal hearings starting at 2:00 p.m. today providing that the Council approves Staff's recommendation.

He stated that if Council approves Judge Smith to conduct the appeal hearings as the hearing officer, the City Council would adjourn this meeting until the next regular City Council meeting of February 14, 2011, but the appeal hearings would begin at 2:00 p.m. today and the Regular City Council meeting scheduled for 2:00 p.m. would be cancelled.

Mayor Pro Tem Anderson asked if the Hearing Officer would make the final determination or would the Council need to ratify his final determination.

City Attorney Munoz replied that the Council could choose to do either, but that he had structured the recommendation so that the Hearing Officer would make the final determination. It would not be a due-process violation if the Hearing Officer makes a decision and then this decision is presented to Council. The Council would have 30 days to decide to agree or disagree. City Attorney Munoz suggested that this may complicate the process and create an opportunity to say that the decision was unfair. He suggested that it would be better not to ratify the Hearing Officer's decision, but it is Council's choice.

Mayor Schoeffel opened the Public Comments.

Ken Robillard, Laguna Beach, read a statement in favor of keeping Holistic Health open in Dana Point.

Mayor Schoeffel closed the Public Comments.

---

---

**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
FEBRUARY 4, 2011**

---

---

City Attorney Munoz responded to the public comment stating that the City Council did not jump lightly into this process of shutting down the marijuana dispensaries. He stated that in July 2009, the City Council made a concerted effort to evaluate the dispensaries to allow them to operate in this city. He added that six dispensaries refused to provide any evidence that they were operating lawfully. He stated that it was illegal in the State of California to sell marijuana and that there was one exception in the law which is that they must be not-for-profit member run collectives. He added that the City has learned through two different Police Services operations that these dispensaries are for-profit businesses, making as much as \$15,000 per day selling marijuana to our residents. He stated that the City has reports that there is a dramatic increase in the use of marijuana by our high school students because of the ease of availability to the high school students. He added that the City is not picking on lawfully operating medical marijuana dispensaries and rather that the City has consistently asked the dispensaries to prove that they are operating lawfully and they have consistently refused to do so. He stated that there were summary judgment motions pending in front of Superior Court in the next few weeks because they refused, in the course of litigation, to show that they are lawful.

Mayor Pro Tem Anderson reiterated that the Council's purpose is whether or not to hire the Hearing Officer.

Council Member Weinberg asked if the Council is being asked to decide to have a Hearing Officer who would make the final decision.

City Attorney Munoz replied that is correct, that is the recommendation.

IT WAS MOVED BY COUNCIL MEMBER WEINBERG, SECONDED BY COUNCIL MEMBER BARTLETT TO HIRE THE HEARING OFFICER, RETIRED JUDGE JAMES SMITH, TO CONDUCT THE APPEAL HEARINGS ON BEHALF OF THE CITY COUNCIL AND MAKE A FINAL DECISION.

The motion carried by the following vote:

AYES: Council Member Lisa Bartlett, Council Member William Brough,  
Council Member Steven Weinberg, Mayor Pro Tem Lara Anderson  
and Mayor Scott Schoeffel  
NOES: None  
ABSENT: None

**PUBLIC COMMENTS (Continued)**

There were no additional Public Comments received.

---

---

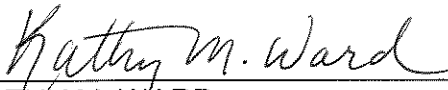
**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
FEBRUARY 4, 2011**

---

---

**ADJOURNMENT**

There being no further business before the City Council at this session, Mayor Schoeffel declared the meeting adjourned at 1:16 p.m. The next Regular Meeting of the City Council will be February 14, 2011 at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California. The 2:00 p.m. appeal hearing proceeded consistent with Council's determination to have a Hearing Officer conduct the appeals.



---

KATHY M. WARD  
CITY CLERK

APPROVED AT THE MEETING OF FEBRUARY 28, 2011