
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MAY 23, 2011**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Schoeffel at 5:03 p.m. in the Dana Point City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point.

ROLL CALL OF CITY COUNCIL MEMBERS:

Present: Mayor Scott Schoeffel
Mayor Pro Tem Lara Anderson
Council Member Lisa Bartlett
Council Member William Brough
Council Member Steven Weinberg

Absent: None

CLOSED SESSION

City Attorney Munoz indicated that there was a need for a Closed Session as follows:

- A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, Government Code § 54956.9 (a), two cases: Name of case: City of Dana Point, Petitioner v. Commissioner of Internal Revenue Service, Respondent, United States Tax Court, Docket No. 3457-10 Name of case: Community Facilities District No. 2006-1 of the City of Dana Point v. Andrew Fonfa, et al. Central Justice Center Case No. 30-2010-00432084

Mayor Schoeffel recessed the meeting into Closed Session at 5:04 p.m. pursuant to Government Code Section 54956 et seq.

RECONVENE CITY COUNCIL MEETING - CALL TO ORDER

Mayor Schoeffel 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; Jeremy Kirchner, Emergency Services Coordinator; Lt. Mark Levy, Police Services; John Tilton, City Architect; Brad Fowler, Director of Public Works/Engineering; John Tilton, City Architect; Christy Teague, Economic Development Manager; Lynn Kelly, Management Analyst; Andy Glass, Accounting Manager; Kevin Evans, Director of Community Services and Parks; Mark Sutton, Building Official; Kelly Straine, Assistant Director of the Dana Point

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Chamber of Commerce; Jackie Littler, Executive Secretary; DyAnne Weamire, Administrative Secretary; and Bobbi Ogan, Deputy City Clerk.

CLOSED SESSION ANNOUNCEMENT

City Attorney Munoz reported that the City has prevailed in the action against the Internal Revenue Service (IRS) regarding the IRS's challenge of the City's designation of Recreational Class Instructors as independent contractors. He stated that the IRS wanted the instructors to be designated as employees. He added that there would have been a very significant financial impact on the City if the City had agreed to the IRS's determination. He stated that when the case was to go to trial, the IRS ultimately capitulated and this morning a Stipulated Decision in favor of the City was filed.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Brad Fowler, Director of Public Works and Engineering Services.

INVOCATION

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

PRESENTATIONS AND PROCLAMATIONS

May Business of the Month - Luxe Restaurant and Bar

Kelly Straine, Assistant Director of the Dana Point Chamber of Commerce provided a PowerPoint presentation. She reported that in 2004, Jimmy Khadivi and Cindy Monroe had opened their first restaurant in Dana Point, Harbor Deli in the Dana Point Harbor, followed by Slice of New York located next door, and Cafe Mezzaluna which was sold in 2010. She stated that after locating a larger space, Jimmy and Cindy opened Luxe Restaurant and Bar on January 6, 2011 on the corner of Del Prado and Violent Lantern. She added that happy hour prices are offered from 3-6:00 p.m. daily and they employ a staff of twenty. Mayor Schoeffel presented a Certificate of Recognition to Jimmy Khadivi and Cindy Monroe for Luxe Restaurant and Bar being selected the Featured Business of the Month, May 2011.

CONSENT CALENDAR

IT WAS MOVED BY COUNCIL MEMBER STEVEN WEINBERG, SECONDED BY COUNCIL MEMBER LISA BARTLETT, ACCEPT ALL ITEMS LISTED ON THE CONSENT CALENDAR.

The motion carried by the following vote:

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

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, APRIL 25, 2011

APPROVED THE MINUTES.

3. PLANNING COMMISSION MEETING MINUTES, APRIL 18, 2011

RECEIVED AND FILED.

4. PLANNING COMMISSION MEETING MINUTES, MAY 2, 2011

RECEIVED AND FILED.

5. PLANNING COMMISSION ACTIONS, MAY 16, 2011

RECEIVED AND FILED.

6. TRAFFIC IMPROVEMENT SUBCOMMITTEE ACTION MINUTES, NOVEMBER 17, 2010

RECEIVED AND FILED.

7. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

8. CITY TREASURER'S REPORT, MARCH 2011

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF MARCH, 2011.

9. CLAIMS AND DEMANDS

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

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10. **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**

AUTHORIZED THE NECESSARY STEPS TO COMMENCE THE COLLECTION OF DELINQUENT SPECIAL TAXES AND 1) ADOPTED **RESOLUTION 11-05-23-01** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, 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; and

2) AUTHORIZED CITY PERSONNEL, IN CONJUNCTION WITH THE CITY ATTORNEY AND OTHER CITY CONSULTANTS, PURSUANT TO GOVERNMENT CODE SECTION 53356.2: (A) TO RECORD NOTICES OF INTENT TO REMOVE THE DELINQUENT SPECIAL TAXES FROM THE TAX ROLLS, AND (B) TO AUTHORIZE THE APPLICABLE COUNTY OFFICIALS REMOVE CURRENT AND FUTURE DELINQUENT SPECIAL TAXES FROM THE TAX ROLLS; AND

3) AUTHORIZED THE CITY ATTORNEY TO PROSECUTE A FORECLOSURE ACTION AND TO COLLECT, IN THE NAME OF THE CITY AN ON BEHALF OF THE OWNERS OF THE BONDS, ALL AMOUNTS DUE ON ACCOUNT OF THE DELINQUENT SPECIAL TAXES WITH RESPECT TO THE PROPERTY IDENTIFIED IN REFERENCED RESOLUTION.

11. **ADOPTION OF A RESOLUTION DESIGNATING CITY'S AGENT FOR FEDERAL AND STATE FINANCIAL ASSISTANCE**

ADOPTED **RESOLUTION 11-05-23-02** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DESIGNATING THE CITY'S AGENT FOR FEDERAL AND STATE FINANCIAL ASSISTANCE.

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12. AWARD OF A CONTRACT FOR THE CONSTRUCTION OF THE ANNUAL ROADWAY RESURFACING PROJECT FY 10/11, PHASE III

1) APPROVED THE CONSTRUCTION CONTRACT DOCUMENTS REQUIRED FOR THE ANNUAL RESIDENTIAL ROADWAY RESURFACING PROJECT FY 10/11 PHASE III; 2) APPROVED AWARD OF CONTRACT TO PALP, INC., DBA EXCEL PAVING COMPANY FOR THE CONSTRUCTION OF THE ANNUAL RESIDENTIAL ROADWAY RESURFACING PROJECT FY 10/11 PHASE III, PROVIDING THAT THE CITY MANAGER OR HIS DESIGNEE SIGNS AND ADMINISTERS THE 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 3) TRANSFERRED FUNDING AS NOTED IN THE FISCAL IMPACT SECTION.

13. MEMORANDUM OF AGREEMENT FOR ESTABLISHMENT AND OPERATION OF ORANGE COUNTY MARINE PROTECTED AREA COUNCIL

1) APPROVED THE MEMORANDUM OF AGREEMENT ENTITLED: MEMORANDUM OF AGREEMENT FOR THE ESTABLISHMENT AND OPERATION OF THE ORANGE COUNTY MARINE PROTECTED AREA COUNCIL; AND 2) AUTHORIZED THE CITY MANAGER OR HIS DESIGNEE TO PARTICIPATE IN THE PROGRAM.

14. 2011-2012 LAW ENFORCEMENT SERVICES AGREEMENT

APPROVED THE LAW ENFORCEMENT SERVICES AGREEMENT WITH THE COUNTY OF ORANGE FOR LAW ENFORCEMENT SERVICES FOR THE 2011-2012 FISCAL YEAR AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT.

15. INITIATION OF BUSINESS LEADER AD HOC COMMITTEE - DANA POINT DESTINY

AUTHORIZED THE INITIATION OF AN AD HOC COMMITTEE OF DANA POINT BUSINESS LEADERS AND APPOINT MAYOR SCOTT SCHOEFFEL AS THE CITY COUNCIL REPRESENTATIVE.

PUBLIC COMMENTS

Bob Fowler, Dana Point, spoke regarding the support the City has been providing the VFW. He stated that beginning June 7, 2011 and every first Tuesday of the month afterward, from 1:30-3:00 p.m. there will be a question and answer session held at the Community Center for Veterans and their families.

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Joe Snyder, Capistrano Beach, stated that without the assistance the City had provided, that the Wall would not have been able to come to the city. He announced that he would be taking over the duties of Commander of VFW Post 9934 from Bob Fowler. He provided details of Bob's service to the country during the Vietnam War. He announced that there would be a Memorial Day service held at Pines Park.

Ingrid McGuire, Dana Point, announced that South Coast Water District would be holding a public forum on June 1 at 2:00 p.m. and 6:00 p.m. for discussion on the proposed water and sewer rate increases at the Ocean Institute. She reported that the District had awarded six (6), \$500 scholarships to high school seniors that had submitted essays on a water related subject.

PUBLIC HEARINGS

16. PUBLIC HEARING AND RESOLUTION TO ADOPT THE PROPOSED OPERATING AND CAPITAL IMPROVEMENT BUDGETS FOR FISCAL YEARS 2011-2012 AND 2012-2013, AND RESOLUTION TO ESTABLISH APPROPRIATIONS LIMIT FOR FISCAL YEAR 2011-2012

City Manager Chotkevys provided a staff report.

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

Mayor Pro Tem Anderson stated that each Council Member had reviewed the proposed budget with the City Manager and Assistant City Manager and that this was not a rubber stamp approval by any means. She added that the City was in a unique position where there was no debt or pension liability.

Council Member Bartlett thanked staff for fine-tuning the budget. She stated that the City Council had been fiscally conservative the last couple of years and that it has served the City well.

Council Member Brough stated that his concerns with the budget are the assumptions that are made with respect to incoming revenue. He proposed that Council freeze spending for the next two (2) years at the current level.

Council Member Weinberg stated that budgets were a road map and that he would approve the propose budget as presented. He added that he was confident that staff would return to the Council if there were any adjustments required.

Council Member Bartlett agreed that a budget provides guidelines and stated that the numbers were not randomly selected. She added that staff works off of

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actual projections provided from the major hotels and that there is opportunity to make adjustments to the budget if needed.

Mayor Pro Tem Anderson stated that property taxes were stable and that was an income that the City could depend on.

Council Member Brough made a motion to freeze spending for the next two years at the current level and the motion died for a lack of a second.

Mayor Schoeffel stated that he was confident with our management structure, disposition of the City Council, and the track record and felt that there was no need to freeze spending.

City Manager Chotkevys stated that if the City Council chose to freeze spending, the budget would have to be increased by five percent (5%).

Council Member Weinberg felt that the staff was fiscally responsible.

IT WAS MOVED BY MAYOR PRO TEM LARA ANDERSON, SECONDED BY COUNCIL MEMBER STEVEN WEINBERG, CONDUCT A PUBLIC HEARING TO REVIEW THE CITY OF DANA POINT PROPOSED OPERATING AND CAPITAL IMPROVEMENT BUDGETS FOR FISCAL YEARS 2011-2012 ("FY 2011") AND 2012-2013 ("FY 2012") AND ADOPT **RESOLUTION 11-05-23-03** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ESTABLISHING THE APPROPRIATIONS LIMIT FOR FISCAL YEAR 2011-12; and

RESOLUTION 11-05-23-04 ENTITLED:

A RESOLUTION OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING AN OPERATING AND CAPITAL IMPROVEMENT BUDGET FOR THE CITY OF DANA POINT FOR FISCAL YEARS 2011-2012 AND 2012-2013; and

RESOLUTION 11-05-23-05 ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING THE SEVEN-YEAR CAPITAL IMPROVEMENT PROGRAM (CIP) FOR FY 12 THROUGH FY 18 AS REQUIRED BY THE OCTA RENEWED MEASURE M GROWTH MANAGEMENT PROGRAM AND VERIFYING THE STATUS OF THE CIRCULATION ELEMENT FOR THE CITY OF DANA POINT; and

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AUTHORIZED THE DIRECTOR OF PUBLIC WORKS AND ENGINEERING SERVICES TO FORWARD THE NECESSARY MEASURE M ELIGIBILITY DOCUMENTATION TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY.

The motion carried by the following vote:

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

NOES: Council Member William Brough

UNFINISHED BUSINESS

There were no Unfinished Business items.

NEW BUSINESS

There were no New Business items.

PUBLIC COMMENTS

There were no additional Public Comments received.

STAFF REPORTS

City Manager Chotkevys stated that he was moved personally and professionally by the VFW and their efforts to do something special for some great Americans and that he was proud to be associated with that. He added that he was also impressed with the City staff and their efforts.

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Mayor Pro Tem Anderson stated that she had turned in her list of meetings attended to the City Clerk. She announced that the Historical Society was honoring Bea Reed at their Founders Day meeting tonight.

Council Member Bartlett stated that there had been many great events including the Ribbon Cutting Ceremony for *Get College Funding*, California Wine Festival, the traveling Vietnam Wall event, and the *Mile for Maddie Walk* last Saturday. She announced that Maddie James' parents had created the foundation to raise money for the Maddie James Seaside Learning Center at the Ocean Institute and that they recently reached their goal. She stated that the Doheny Blues Festival held this past weekend was wonderful.

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She reported that there would be a Memorial Day Ceremony at Pines Park at 10:00 a.m. She announced that the Movies in the Park would begin in June and the Concerts in the Park in July.


Council Member Brough stated that he had turned in his list of meetings attended to the City Clerk. He felt that the VFW did a great job in bringing the Wall to the city. He thanked staff for their support of that event. He reported that on March 22nd the Orange County Board of Supervisors passed an Ordinance banning sex offenders from County parks which meant that the Harbor was now off limits to sex offenders. He asked for an item to be placed on the next City Council Agenda that would ban all sex offenders from City parks. He felt that a sex offender Ordinance would be another tool to help protect our kids in the parks.

Council Member Weinberg stated that he had turned in his list of meetings attended to the City Clerk. He reported that the Dana Point Grand Prix had close to 1,000 riders and that it was a great event. He stated that the Memorial Day Service in Pines Park is always a very moving event.

Mayor Schoeffel stated that had a great time helping escort the Wall into town. He reported that during the Blues Festival weekend, the hotels were close to 100% occupied.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Schoeffel declared the meeting adjourned at 6:53 p.m. and announced that the next Regular Meeting of the City Council will be held on June 13, 2011 at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.



KATHY M. WARD
CITY CLERK

APPROVED AT THE MEETING OF JUNE 13, 2011

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Meetings Attended Since the April 25, 2011 City Council Meeting:

Mayor Scott Schoeffel

- 04-28-11 Chamber of Commerce grand opening and ribbon cutting for *Get College Funding Now*
- 04-29-11 Spoke at Arbor Day Program at Richard Henry Dana Elementary School
- 04-30-11 California Wine Festival at Doheny State Beach Park
Amgen Dana point Grand Prix of Cycling fundraiser at Dana Point Yacht Club
- 05-01-11 Amgen Dana Point Grand Prix of Cycling race
- 05-11-11 Rode in motorcycle procession escorting Vietnam Veterans Traveling Wall into Sea Terrace Park
- 05-12-11 San Joaquin Hills TCA Board meeting
Spoke at Opening Ceremonies for the Vietnam Veterans Traveling Wall at Sea Terrace Park
- 05-13-11 Chamber of Commerce grand opening and ribbon cutting for Pacific Waves Chiropractic on San Juan Avenue
Working lunch with Chamber of Commerce personnel regarding economic development
Dana Point Coastal Arts concert at St. Edwards Catholic Church
- 05-14-11 Help produce and performed at "A Mile for Maddie" fundraiser for the Maddie James Foundation at the Ocean Institute
- 05-15-11 Performed Vietnam Era music with Martin Gerschwitz and Keston Barker at the Vietnam Veterans Traveling Wall in Sea Terrace Park
- 05-16-11 Spoke at the Closing Ceremonies for the Vietnam Veterans Traveling Wall at Sea Terrace Park
- 05-18-11 "Ocean Inspirations" fundraising breakfast program at the Ocean Institute
- 05-20-11 Helped produce and performed at the "Reaching for the Stars" fundraiser for the Maddie James Foundation at the St. Regis Monarch Beach
- 05-21-11 Spoke at the Doheny Blues Festival at Doheny State Beach Park
- 05-22-11 Spoke at the Doheny Blues Festival at Doheny State Beach Park

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Mayor Pro Tem Lara Anderson

- 04-28-11 OC Public Library Advisory Board Finance & Revenue Committee meeting
- 04-30-11 Emcee for Pet Contests at the Wag-A-Thon
- 05-02-11 Fundraiser at Olamendi's for the Traveling Vietnam Memorial Wall
- 05-05-11 Coastal Animal Services Authority JPA meeting
- 05-12-11 Opening Ceremonies and reception for the Wall
- 05-22-11 Doheny Blues Festival

Council Member Lisa Bartlett

Several TCA and SCAG meetings, the SCAG Annual Conference and the OCBC/ACC-OC Advocacy trip to Sacramento

- 04-28-11 Ribbon Cutting Ceremony for Get College Funding
- 04-30-11 California Wine Festival event at Doheny State Beach
- 05-02-11 VFW Vietnam Wall event at Olamendi's Restaurant
- 05-12-11 Opening ceremony for the Vietnam Traveling Wall in Dana Point
- 05-14-11 Mile for Maddie Walk to raise funds for the Ocean Institute Seaside Learning Center
- 05-16-11 Closing ceremony for the Traveling Vietnam Wall in Dana Point
- 05-17-11 Provided a "City Update" to the Niguel Shores Men's Club
- 05-21/5-22 Doheny Blues Festival in Doheny State Beach

Council Member William Brough

- 04-30-11 Dana Point Grand Prix Amgen Fundraiser, Yacht Club
- 05-01-11 Dana Point Grand Prix, both children participated
- 05-02-11 VFW Wall fundraiser, Olamendi's

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- 05-07-11 5th Marine Car Wash
- 05-11-11 Don Hansen Tourism Award, Costa Mesa
Traveling Vietnam Wall parade
Dana Wharf 40th Anniversary
- 05-12-11 Traveling Wall Opening Ceremony
- 05-13-11 Wall Ceremony
Chamber Ribbon Cutting
- 05-16-11 Wall Closing Ceremony

Council Member Steven Weinberg

- 04-28-11 Vector Control Budget Review
OCFA Executive Committee
OCFA Board meeting
- 04-30-11 Wine Festival
Dana Point BFC Charity Night
Dana Point Grand Prix
- 05-02-11 VFW Post 9934 Vietnam Memorial Wall Fundraiser
- 05-11-11 OCFA CIP meeting
OCFA Budget and Finance meeting
Parade of Vietnam Memorial Wall
40th Dana Wharf Anniversary
- 05-12-11 VFW Post 9934 Opening Ceremony for the Vietnam Memorial Wall –
reception following at the St. Regis
- 05-13-11 Coastal Arts Concert
- 05-18-11 Ocean Institute Reception
- 05-19-11 Vector Control Budget and Finance meeting
Vector Control Board meeting
- 05-21/5-22 Doheny Blues Festival