
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
AUGUST 16, 2016**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Tomlinson at 5:02 p.m. in the City Council Chambers, 33282 Golden Lantern, Dana Point.

ROLL CALL OF CITY COUNCIL MEMBERS:

Present: Mayor John A. Tomlinson
Mayor Pro Tem Richard A. Viczorek
Council Member Joseph L. Muller
Council Member Carlos N. Olvera
Council Member J. Scott Schoeffel
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 (d1), (5 cases)

Mayor Tomlinson recessed the meeting into a Closed Session at 5:02 p.m. pursuant to Government Code Section 54956 et seq.

RECONVENE CITY COUNCIL MEETING - CALL TO ORDER

Mayor Tomlinson reconvened the meeting at 6:26 p.m. All Council Members were present.

STAFF PRESENT: Douglas C. Chotkevys, City Manager; Patrick Munoz, City Attorney; Mike Killebrew, Assistant City Manager; Kathy Ward, City Clerk; Mike Rose, Director of Disaster Preparedness; Lt. Russ Chilton; Ursula Luna-Reynosa, Director of Community Development; Brad Fowler, Director of Public Works and Engineering; Matthew Schneider, Planning Manager; Sean Nicholas, Senior Planner; Brian McClure, Interim Director of Community Services and Parks; Mark Sutton, Building Official; Matthew Kunk, Principal City Engineer; Brandy Boka, Associate Engineer; Jackie Littler, Executive Assistant; DyAnne Weamire, Senior Administrative Assistant, and Bobbi Ogan, Deputy City Clerk.

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CLOSED SESSION ANNOUNCEMENT

City Attorney Munoz stated that he had nothing to report.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Muller.

INVOCATION

The Invocation was provided by Pastor Rob De Klotz of South Shores Church.

PRESENTATIONS AND PROCLAMATIONS

There were no Presentations nor Proclamations.

CONSENT CALENDAR

A member of the public removed Item 10 from the Consent Calendar.

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY COUNCIL MEMBER J. SCOTT SCHOEFFEL, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM 10.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member Carlos N. Olvera, Council Member J. Scott Schoeffel, Mayor Pro Tem Richard A. Viczorek, and Mayor John A. Tomlinson

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, JULY 19, 2016

APPROVED THE MINUTES.

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3. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

4. CITY TREASURER'S REPORT, JULY 2016

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF JULY 2016.

5. CLAIMS AND DEMANDS

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

6. PROFESSIONAL SERVICES AGREEMENT FOR SUPPLEMENTAL DEVELOPMENT COUNTER AND INSPECTION SERVICES

AUTHORIZED THE CITY MANAGER TO EXECUTE A CONSULTANT SERVICES AGREEMENT BY AND BETWEEN THE CITY AND VCA CODE GROUP FOR PLAN CHECK SERVICES FOR THE COMMUNITY DEVELOPMENT DEPARTMENT.

7. DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT QUARTERLY REPORT FOR APRIL - JUNE 2016

RECEIVED AND FILED.

8. DOHENY VILLAGE PLAN UPDATE

RECEIVED AND FILED THIS REPORT.

9. RESOLUTION CONDITIONALLY VACATING A PORTION OF DEL PRADO AVENUE NEAR BLUE LANTERN AS A RESULT OF RECENT STREET IMPROVEMENTS

ADOPTED **RESOLUTION 16-08-16-01** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA CONDITIONALLY VACATING A PORTION OF DEL PRADO AVENUE (FORMERLY SAN JUAN AVENUE) PER TRACT MAP NUMBER 573 AND ADJACENT TO ASSESSOR PARCEL NUMBER 682-233-01; and APPROVED A PUBLIC ROADWAY, DRAINAGE, UTILITY AND LANDSCAPE EASEMENT AGREEMENT; and

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APPROVED A PUBLIC ROADWAY, DRAINAGE, UTILITY AND LANDSCAPE EASEMENT AGREEMENT.

10. AMENDMENT OF CONSULTANT SERVICES AGREEMENT BY AND BETWEEN THE CITY OF DANA POINT AND OPTICOS DESIGN, INC. FOR SERVICES RELATED TO THE CREATION OF A FORM BASED CODE FOR THE DOHENY VILLAGE AREA

A member of the public removed this item from the Consent Calendar.

City Manager Chotkevys introduced the item and Director of Community Development Luna-Reynosa provided a staff report.

Council Member Muller asked if the additional meetings were to discuss parking.
Director Luna-Reynosa replied yes as well as to present the draft document to the public to receive feedback.

Council Member Muller asked when the meetings would start.
Director Luna-Reynosa replied that the first meeting was scheduled for September 14. She added that there would be a notice in the newspaper, on the website, and email blasts would be sent.

Mayor Tomlinson opened the Public Comments.

It was determined that there were no requests to speak on this item and that the item had been removed from the Consent Calendar by mistake.

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY COUNCIL MEMBER J. SCOTT SCHOEFFEL, THAT THE CITY COUNCIL AUTHORIZE THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES AGREEMENT BY AND BETWEEN THE CITY OF DANA POINT AND OPTICOS DESIGN, INC.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member Carlos N. Olvera, Council Member J. Scott Schoeffel, Mayor Pro Tem Richard A. Viczorek, and Mayor John A. Tomlinson

NOES: None

PUBLIC COMMENTS

Dominic Cox, Troop 724 San Juan Capistrano, announced that for his scout project he had started a program called Support Orange County Sheriffs (Operation SOS) a letter

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writing campaign for local south Orange County Officers to show appreciation. He asked for everyone who was interested to sign the thank you cards he had. He reported that he would be collecting these cards until the end of August. He stated that if you would like to write your own thank you to please email it to letterforsos@gmail.com.

City Manager Chotkevys encouraged Dominic to contact the City Clerk so that the City could put something on our social media page as well as our website on what you are trying to accomplish and how the community can help you fulfill your goal.

Barbara Johannes, Dana Point, invited the community to the Dana Point Harbor 50 Year Time Capsule Celebration. She reported that there would be an unveiling ceremony at 4 p.m. She stated that for more information visit www.danapointharbor.com.

Barbara Wilson, Dana Point, spoke regarding the short term rental ordinance. She stated that she appreciated the work that staff has done on this ordinance over the last three years, but felt that the ordinance did not address the issues that were currently occurring in the community. She asked that the City Council to not adopt the ordinance on September 20th and instead form a task force of staff, residents, and personnel from other local cities to address this issue in a manner that protects the residential neighborhoods quality of life.

Earl Gilday, Dana Point, spoke regarding short term rentals and his opposition to allowing this use.

Miriam Rupke, Dana Point, described her management of her short term rental. She stated that she screens every guest that comes into their home, and that they have mostly families as guests. She added that if short term rentals were prohibited it would not only impact the owners of the rentals, but the restaurants as well. She stated that she would rather keep her home empty rather than disturb her neighbors.

Robin Dier, Capistrano Beach, spoke regarding short term rentals. She stated that she has one on her street and felt that the owners should have to obtain the agreement of the neighbors to allow the use.

Shevy Akason, Dana Point, stated that they use their home for a short term rental over the summer when they are gone and that they have had great success. He mentioned the benefits of vacation renting. He added that the City has a noise ordinance which should be applied to everyone not just vacation renters. He stated that the City's permit is very specific limiting the number of vehicles allowed and suggested that if a rental has too many vehicles, the neighbors should share their concern with the City.

John Marshall, Dana Point, spoke about vacation rentals and shared the reasons that he does not support the use.

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Sharon Marshall, Capistrano Beach, spoke regarding short term rentals. She felt that the rental next to her has changed the street. She reported that the home allows 14 people to stay which generates more cars and traffic than a single family home.

Toni Nelson, Capistrano Beach, spoke regarding the short term rental ordinance and the long lasting consequences. She stated that the Council should vote no on the ordinance in its present form.

Betty Hill, Capistrano Beach, read a letter on behalf of Denise Iger regarding short term rentals. She stated that people don't complain to the City because they felt it would be pointless. She added that the police should not have to act as property managers. She reasoned that if all of the other cities were banning this use, Dana Point would have even more visitors.

Markus Lenger, Capistrano Beach, stated that he was currently a block captain for his neighborhood. He spoke regarding sober living homes in the area and the lack of code enforcement. He felt that short terms rentals would further compound the issues in the area. He added that he lives across from a short term rental and experiences first-hand the issues. He asked the Council to revisit the issue and propose a new ordinance.

Doris Chan, Dana Point, stated that operating a short term rental is her only available income since her divorce. She added that she only rents to stellar clients.

Roger Malcolm, Capistrano Beach, stated that he has a sober living home two doors down from him. He added that he does not want to live in a spring break community and felt that it would be worse with short term rentals.

PUBLIC HEARINGS

11. ZONE TEXT AMENDMENT ZTA16-0001, LOCAL COASTAL PROGRAM AMENDMENT LCPA16-00001, AND GENERAL PLAN AMENDMENT GPA16-0001; TO AMEND THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN (HDCP), TO ADDRESS PUBLIC ACCESS OVER SPECIFIED ACCESS WAYS IN THE RESIDENTIAL PORTION OF THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN AND THE USE OF THREE RETRACTABLE GATES

City Manager Chotkevys provided an introduction of the item and Senior Planner Nicholas provided a staff report.

Council Member Muller asked if the new gates slide instead of opening in and out. Senior Planner Nicholas replied that a formal design has not yet been identified. He stated that should the item be approved by the Council and the Coastal Commission, the gates would be designed through that Coastal Development process.

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Council Member Muller stated that he wants some way for people to get out of the gates should they close.

Council Member Schoeffel asked what the letter meant that the Coastal Commission had sent to staff recently.

Director Luna-Reynosa replied that staff has a call into the Coastal Commission office to receive a better understanding of the comments.

City Manager Chotkevys added that this is the dialogue the City has received throughout the settlement agreement and that he anticipates continued negotiation should the Council move forward.

Mayor Tomlinson opened the Public Hearing.

Sanjay Mathur, Dana Point, asked the City Council to approve the LCPA. He stated that he was concerned with liability when it was dark. He added that hours were agreed upon so now it is a matter of how the hours are enforced.

Geoff Rosenhain, Dana Point, encouraged the City Council to make a decision that would stop wasting time and money.

David Demshur, Dana Point, asked for the City Council's approval of the gates. He stated that safety was a primary concern for the residents that live there.

David Buckanavage, Dana Point, stated that he supports the LCPA. He felt that their rights were violated daily because people walk off the path, bring their dogs, and toss cigarettes. He added that the gates should be closed when reasonable people do not visit the beach and felt that liability was also an issue.

Kevin Darnall, Strand Homeowner Association, stated that he supports staff's recommendation. He added that the biggest issue was public safety. He stated that they monitor the number of people who access the area after the allowed hours and there have been as many as 15 people a night. He felt that it was important that the City enforce the hours of operation and that the only way to do that is through gates.

Preston Head III, Laguna Beach, stated that he does not understand allowing access to the beach after the hours allowed.

Debra Lewis, Dana Point, questioned who was paying the legal fees and she mentioned an MOU between the City and Headlands Reserve. She also asked who would be responsible for the maintenance of the gates and indemnification if someone should get hurt.

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Buck Hill, Capistrano Beach, felt that it would be beneficial if the signage was updated immediately and factually state what the current rules were.

City Manager Chokeyevs replied that as part of the settlement agreement, a comprehensive signage program was in process and new signage was being ordered. He stated that City staff was working with the Coastal Commission closely to ensure no issues.

Mayor Tomlinson closed the Public Hearing.

Council Member Muller stated that in reference to the trails that were available 24 hours a day; the City had control of the switchback and the County was in control of the northern trail.

City Manager Chokeyevs replied that was correct.

Council Member Schoeffel asked if there has ever been a safety expert consulted or CJPIA and whether there have been any injuries reported.

Assistant City Manager Killebrew replied that every year there is a walk thru by a representative of California Joint Powers Insurance Authority which is the agency that insures Dana Point along with a number of other cities. He explained that government agencies have protections in regards to trail systems.

Council Member Schoeffel asked if there had been any injury claims.

Assistant City Manager Killebrew replied there have been no reports.

Council Member Schoeffel asked about crime reports and what was the trend.

Lt. Chilton replied that a study was conducted on criminal activity over the last couple of years. He reported that the highest call for service was auto burglary alarms.

Council Member Schoeffel asked how the Headlands compares to other areas of the city.

Lt. Chilton replied that he would classify it as a low crime rate.

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY MAYOR PRO TEM RICHARD A. VICZOREK, THAT THE CITY COUNCIL CONDUCT A PUBLIC HEARING AND ADOPT **RESOLUTION 16-08-16-02** APPROVING GPA16-0001 AND REQUESTING CERTIFICATION OF LCQA16-0001 FROM THE CALIFORNIA COASTAL COMMISSION:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, REGARDING GENERAL PLAN AMENDMENT GPA16-00001 AND LOCAL COASTAL PROGRAM AMENDMENT LCQA16-0001 TO AMEND LAND USE POLICY 5.31 AND REQUESTING CERTIFICATION OF LOCAL COASTAL

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PROGRAM AMENDMENT LCPA16-0001 BY THE CALIFORNIA COASTAL COMMISSION; AND

INTRODUCE FOR FIRST READING AN ORDINANCE ENTITLED:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA16-0001 TO AMEND THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN; SECTION 4.0 TO ADDRESS PUBLIC ACCESS OVER SPECIFIED ACCESS WAYS IN THE RESIDENTIAL PORTION OF THE HEADLANDS AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA16-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member Carlos N. Olvera, Council Member J. Scott Schoeffel, Mayor Pro Tem Richard A. Viczorek, and Mayor John A. Tomlinson

NOES: None

UNFINISHED BUSINESS

There was no Unfinished Business.

NEW BUSINESS

12. HEARING ON THE APPEAL OF THE DETERMINATION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT THAT THE PROPERTY LOCATED AT 35291 BEACH ROAD IS WITHIN THE FP-3 FLOODPLAIN OVERLAY DISTRICT

City Attorney Munoz reported that the appellant had withdrawn his request for the appeal.

13. HEARING ON A REQUEST FOR AN EXCEPTION TO THE FLOODPLAIN OVERLAY DISTRICT REGULATIONS FOR THE PROPERTY LOCATED AT 35291 BEACH ROAD

Mayor Tomlinson recused himself from this item due to a potential conflict of interest and left the Council Chambers at 7:42 p.m.

Director Luna-Reynosa provided a staff report.

Mayor Pro Tem Viczorek opened the Public Comments.

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Alan Block, Los Angeles (Attorney representing the property owner), thanked staff and the City Attorney for bringing this issue before the City Council this evening.

Dave Skully, Solana Beach (Coastal Engineer for the property owner), described sea level rise. He stated that he agreed with staff's determination.

Mayor Pro Tem Viczorek closed the Public Comments.

IT WAS MOVED BY COUNCIL MEMBER J. SCOTT SCHOEFFEL, SECONDED BY COUNCIL MEMBER CARLOS N. OLVERA, THAT THE CITY COUNCIL ADOPT **RESOLUTION 16-08-16-03** APPROVING THE PROPERTY OWNER'S REQUEST FOR AN EXCEPTION TO THE FLOODPLAIN REGULATIONS LIMITING MODIFICATION TO STRUCTURES LOCATED IN THE FP-3 FLOODPLAIN OVERLAY DISTRICT FOR THE PROPERTY AT 35291 BEACH ROAD (APN. 691-151-10) ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, GRANTING AN EXCEPTION TO CHAPTER 9.31.050 (C) (3) (A) TO ALLOW RETENTION OF ALTERATIONS EXCEEDING TEN PERCENT (10%) OF THE VALUATION OF THE BUILDING FOR THE PROPERTY LOCATED AT 35291 BEACH ROAD.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member Carlos N. Olvera, Council Member J. Scott Schoeffel, and Mayor Pro Tem Richard A. Viczorek

NOES: None

RECUSE: Mayor John A. Tomlinson

PUBLIC COMMENTS

There were no additional Public Comments received.

STAFF REPORTS

City Manager Chotkevys thanked Lt. Chilton for putting together the *National Night Out*. He reported that he and Jeff Rosaler had attended a recent Coastal Commission meeting where the City received a \$135,000 grant to do an LCPA on sea level rise. He added that Jeff has been appointed to monitor and implement the settlement agreement with the Headlands.

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City Attorney Munoz reported that on September 29 he would be speaking at the Association of California Cities, Orange County meeting to discuss the November ballot measures including Proposition 64 which is the legalization of marijuana.

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Council Member Schoeffel felt that this year's summer concert series has been one of the best that he has been involved in.

Council Member Olvera stated that he had nothing to report.

Council Member Muller stated that he thought the reason the Council was waiting to bring back the short term rental ordinance to the second meeting of September was because the first meeting was going to be cancelled. He added that since the Council would be meeting he would make a motion to bring back short term rentals earlier instead of waiting to have the discussion.

Mayor Pro Tem Viczorek stated that he would second Council Member Muller's motion. He added that it has been his position that the Council not wait to vote on the issue.

City Attorney Munoz clarified that it was not technically a motion that needed to be voted upon. He added per Council Policy the Mayor can put something on the agenda or two Council Members can ask for the item to be agendized.

Council Member Muller stated that he would turn in his list of meetings attended to the City Clerk.

Mayor Tomlinson returned to the Council Chambers at 7:54 p.m.

Mayor Tomlinson stated that he would turn in his list of meetings to the City Clerk.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Tomlinson adjourned the meeting at 7:57 p.m. in honor of Council Member Olvera's birthday and announced that the next Regular Meeting of the City Council will be September 6, 2016, 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 SEPTEMBER 6, 2016

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Meetings attended since July 19, 2016:

Mayor Pro Tem Richard A. Viczorek

July 20 - California JPIA Annual Board of Directors Meeting

Council Member Joseph L. Muller

July 28 - OCFA

July 29 - Meeting with Alan Bell, Toni Nelson and Buck Hill

August 11 - TCA