

CITY OF DANA POINT

CITY COUNCIL REGULAR MEETING



**TUESDAY
NOVEMBER 15, 2016
5:00 P.M.**

ACTION AGENDA

Location: City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point, California 92629

Next City Council Ordinance No. 16-08

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 5:01 p.m. in the City Council Chambers, 33282 Golden Lantern, Dana Point.

ROLL CALL OF CITY COUNCIL MEMBERS:

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

CLOSED SESSION

City Attorney Munoz indicated that there was a need for Closed Session discussion and stated that there was also a need to add one additional item under Anticipated Litigation Government Code § 54956.9 (d1).

IT WAS MOVED BY MAYOR TOMLINSON, SECONDED BY COUNCIL MEMBER OLVERA, THAT THE CITY COUNCIL ADD AN ADDITIONAL ANTICIPATED LITIGATION ITEM TO THE CLOSED SESSION DISCUSSION.

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
ABSENT: None

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Government Code § 54956.9 (d1), (2 cases)

- B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION, Government Code § 54956.9 (a), (4 cases)

City of Dana Point, et al v Sobertec LLC, et al; Orange County Superior Court Case No. 30-2016-00859437-CU-MC-CJC; and

City of Dana Point, et al v. Capo By the Sea, Inc; Orange County Superior Court Case No. 30-2016-00859426-CU-MC-CJC

Surfrider Foundation v. City of Dana Point; San Diego Superior Court Case No. 37-2010-00099878

City of Dana Point v. Headlands Reserve LLC, Sanford Edward, et al (Orange County Superior Court Case No. 30-2016-00872051)

- C. CONFERENCE WITH LABOR NEGOTIATOR, Government Code § 54957.6

Agency Designated Representatives: Acting City Manager
Unrepresented and Represented Employees: All positions in City

- D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION, Government Code § 54957:
Title: Acting City Manager

- E. PUBLIC EMPLOYMENT, Government Code § 54957: Title: Recruitment firm for City Manager recruitment

Mayor Tomlinson recessed the meeting into a Closed Session at 5:03 p.m. pursuant to Government Code Section 54956 et seq.

RECONVENE CITY COUNCIL MEETING – CALL TO ORDER

Mayor Tomlinson reconvened the meeting at 6:32 p.m. All Council Members were present.

STAFF PRESENT: Patrick Munoz, City Attorney; Mike Killebrew, Acting City Manager; Kathy Ward, City Clerk; Mike Rose, Director of Disaster Preparedness; Lt. Russ Chilton; Ursula Luna-Reynosa, Director of Community Development; Mark Denny, Deputy City Manager; Matthew Schneider, Planning Manager; Brian McClure, Deputy Director of Community Services and Parks; Mark Sutton, Building Official; Eric Haghani, Senior Structural Engineer; Matthew Sinacori, Deputy Director of Public Works and Engineering; Kelly Reenders, Economic Development Manager, Shelley Velez, HR Manager; Gail Enriquez, City Clerk Specialist, Johnathan Ciampo, Senior Planner, Rachel Johnson, Assistant Administrative Analyst, and Bobbi Ogan, Deputy City.

CLOSED SESSION ANNOUNCEMENT

City Attorney Munoz reported that the City Council would be holding a Special Closed Session on Friday at 9:00 a.m. for the purposes of interviewing firms for the City Manager recruitment.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Olvera.

INVOCATION

The Invocation was provided by Associate Pastor Jens Christy of Capo Beach Church.

PRESENTATIONS AND PROCLAMATIONS

Business of the Month - Schaar Art Studio
Employee of the Month – Bobbi Ogan

CONSENT CALENDAR

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

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY COUNCIL MEMBER 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 J. Scott Schoeffel, Council Member Carlos N. Olvera, Mayor Pro Tem Richard A. Viczorek and Mayor John A. Tomlinson

NOES: None

ABSENT: 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, NOVEMBER 1, 2016

APPROVED THE MINUTES.

3. YOUTH BOARD MEETING MINUTES, OCTOBER 20, 2016

RECEIVED AND FILED.

4. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

5. CLAIMS AND DEMANDS

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

6. RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE APPROVAL OF THE MEASURE M (M2) EXPENDITURE REPORT FOR FY2015-2016

ADOPT **RESOLUTION 16-11-15-01** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING THE RENEWED MEASURE M (M2) EXPENDITURE REPORT FOR FISCAL YEAR 2015-2016; and

AUTHORIZED THE MAYOR TO SIGN THE RESOLUTION ON BEHALF OF THE CITY; AND DIRECTED STAFF TO SUBMIT THE RESOLUTION FOR THE CITY OF DANA POINT TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY (OCTA) TO MAINTAIN ELIGIBILITY IN THE MEASURE M (M2) PROGRAM.

7. DOHENY VILLAGE PLAN UPDATE

RECEIVED AND FILED.

8. DISPOSITION OF NON-ESSENTIAL CITY RECORDS

APPROVED THE 2016 DISPOSITION ON NON-ESSENTIAL CITY RECORDS IN ACCORDANCE WITH CALIFORNIA STATE LAW AND THE CITY'S APPROVED RECORDS RETENTION SCHEDULE AND ADOPTED **RESOLUTION 16-11-15-02** 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.

9. MONTHLY FINANCIAL ACTIVITY REPORT, AUGUST 2016

RECEIVED AND FILED THE MONTHLY FINANCIAL ACTIVITY REPORT FOR AUGUST 2016.

10. PINES PARK ARBORIST REPORT

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

IT WAS MOVED BY COUNCIL MEMBER SCHOEFFEL, SECONDED BY COUNCIL MEMBER OLVERA, THAT THE CITY COUNCIL RECEIVE AND FILE THE ARBORIST'S REPORT ON THE STATUS OF THE PINE TREES IN PINES PARK.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

PUBLIC COMMENTS

Kyle Fraser
Denise Erkeneff
Dana Yarger

PUBLIC HEARINGS

11. **SECOND READING AND ADOPTION BY REFERENCE THE CALIFORNIA CODES OF REGULATIONS TITLE 24, PARTS 1-12, KNOWN AND DESIGNATED AS THE 2016 EDITION OF THE CALIFORNIA BUILDING CODE, 2016 EDITION OF THE CALIFORNIA RESIDENTIAL CODE, 2016 EDITION OF THE CALIFORNIA ELECTRICAL CODE, 2016 EDITION OF THE CALIFORNIA PLUMBING CODE, 2016 EDITION OF THE CALIFORNIA MECHANICAL CODE, 2016 EDITION OF THE CALIFORNIA ADMINISTRATIVE CODE, 2016 EDITION OF THE CALIFORNIA REFERENCE STANDARDS CODE, 2016 EDITION OF THE CALIFORNIA ENERGY CODE, 2016 EDITION OF THE CALIFORNIA GREEN BUILDING STANDARDS CODE, 2016 EDITION OF THE CALIFORNIA HISTORICAL BUILDING CODE, 2016 EDITION OF THE CALIFORNIA EXISTING BUILDING CODE AND THE 2016 EDITION OF THE CALIFORNIA FIRE CODE, MAKING AMENDMENTS THERETO, AND RELATED ACTIONS**

IT WAS MOVED BY COUNCIL MEMBER SCHOEFFEL, SECONDED BY COUNCIL MEMBER OLVERA, THAT THE CITY COUNCIL CLOSE THE PUBLIC HEARING, HOLD A SECOND READING AND ADOPT **ORDINANCE 16-08** ENTITLED:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTERS 8.02, 8.03, 8.12, 8.14, 8.16, 8.20, 8.24, 8.26, 8.28, 8.30, 8.32, 8.34, 8.36 AND 8.38 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 2016 EDITION OF THE CALIFORNIA BUILDING CODE, 2016 EDITION OF THE CALIFORNIA RESIDENTIAL CODE, 2016 EDITION OF THE CALIFORNIA ELECTRICAL CODE, 2016 EDITION OF THE CALIFORNIA PLUMBING CODE, 2016 EDITION OF THE CALIFORNIA MECHANICAL CODE, 2016 EDITION OF THE CALIFORNIA ADMINISTRATIVE CODE, 2016 EDITION OF THE CALIFORNIA REFERENCE STANDARDS CODE, 2016 EDITION OF THE CALIFORNIA ENERGY CODE, 2016 EDITION OF THE CALIFORNIA GREEN BUILDING STANDARDS CODE, 2016 EDITION OF THE CALIFORNIA HISTORICAL BUILDING CODE, 2016 EDITION OF THE CALIFORNIA EXISTING BUILDING CODE AND THE 2016 EDITION OF THE CALIFORNIA FIRE CODE, MAKING AMENDMENTS THERETO, AND RELATED ACTIONS.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

12. DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT ANNUAL REPORT AND RENEWAL FOR 2017

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY MAYOR TOMLINSON, THAT THE CITY COUNCIL CONDUCT A PUBLIC HEARING; AND ADOPT **RESOLUTION 16-11-15-03** ENTITLED:

A RESOLUTION OF THE CITY OF DANA POINT, CALIFORNIA, CONFIRMING THE 2016 ANNUAL REPORT AND DECLARING THE INTENTION OF THE COUNCIL TO CONTINUE THE PROGRAM AND ASSESSMENTS FOR THE 2017 CALENDAR YEAR FOR THE DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID).

The motion carried by the following vote:

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

NOES: None

ABSENT: None

UNFINISHED BUSINESS

There were no Unfinished Business items.

NEW BUSINESS

Mayor Tomlinson recused himself from Item 13 due to a potential conflict of interest and left the Council Chambers at 7:20 p.m.

13. HISTORIC PRESERVATION AGREEMENT (MILLS ACT) FOR THE PROPERTY LOCATED AT 34283 VIA LOPEZ

IT WAS MOVED BY COUNCIL MEMBER SCHOEFFEL, SECONDED BY COUNCIL MEMBER OLVERA, THAT THE CITY COUNCIL AUTHORIZE THE MAYOR PRO TEM TO SIGN A HISTORIC PROPERTY PRESERVATION AGREEMENT WHICH WOULD ALLOW THE PROPERTY OWNERS OF THE HISTORIC STRUCTURE AT 34283 VIA LOPEZ TO PARTICIPATE IN THE STATE'S MILLS ACT PROGRAM.

The motion carried by the following vote:

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

NOES: None

ABSENT: Mayor John A. Tomlinson

Mayor Tomlinson returned to the Council Chambers at 7:26 p.m.

14. RATIFY THE ORIGINAL CONTRACT AGREEMENT AND APPROVE A CONTRACT AMENDMENT WITH TOM BISTLINE, INCORPORATED FOR ADDITIONAL AS-NEEDED REIMBURSABLE PUBLIC WORKS DEVELOPMENT WATER QUALITY INSPECTION SERVICES

IT WAS MOVED BY COUNCIL MEMBER SCHOEFFEL, SECONDED BY MAYOR PRO TEM VICZOREK, THAT THE CITY COUNCIL RATIFY THE ORIGINAL CONTRACT AGREEMENT DATED AUGUST 18, 2015, AND APPROVE A CONTRACT AMENDMENT WITH TOM BISTLINE, INCORPORATED FOR ADDITIONAL AS-NEEDED REIMBURSABLE PUBLIC WORKS WATER QUALITY INSPECTION SERVICES AND AUTHORIZE THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE CONTRACT AMENDMENT.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

15. ADOPTION OF MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF DANA POINT AND THE DANA POINT EMPLOYEES ASSOCIATION (DPEA)

IT WAS MOVED BY MAYOR TOMLINSON, SECONDED BY COUNCIL MEMBER SCHOEFFEL, THAT THE CITY COUNCIL APPROVE THE MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF DANA POINT AND THE DANA POINT EMPLOYEES ASSOCIATION (DPEA), AND AUTHORIZE THE ACTING CITY MANAGER TO SIGN THE MOU.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

16. LETTER IN SUPPORT TO H.R. 6070, SAFE RECOVERY AND COMMUNITY EMPOWERMENT ACT

IT WAS MOVED BY COUNCIL MEMBER SCHOEFFEL, SECONDED BY COUNCIL MEMBER OLVERA, THAT THE CITY COUNCIL AUTHORIZE THE MAYOR TO SEND A LETTER IN SUPPORT OF H.R. 6070 ON BEHALF OF THE CITY COUNCIL.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

17. APPROVAL OF BOTH A COOPERATIVE AGREEMENT C-6-1478 WITH THE ORANGE COUNTY TRANSPORTATION AUTHORITY FOR 2016 PROJECT "V" COMMUNITY-BASED TRANSIT/CIRCULATORS GRANT FUNDS AND A CONTRACT AMENDMENT WITH PROFESSIONAL PARKING, INCORPORATED FOR ADDITIONAL TROLLEY-SHUTTLE SERVICES

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY MAYOR TOMLINSON, THAT THE CITY COUNCIL APPROVE THE ATTACHED COOPERATIVE AGREEMENT WITH THE ORANGE COUNTY TRANSPORTATION AUTHORITY (OCTA) AUTHORIZING THE MAYOR TO SIGN THE AGREEMENT; APPROVE A FIRST AMENDMENT WITH PROFESSIONAL PARKING, INCORPORATED FOR ADDITIONAL TROLLEY AND SHUTTLES SERVICES AND AUTHORIZE THE CITY MANAGER TO SIGN THE FIRST AMENDMENT.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

18. QUALIFICATION OF REFERENDUM PETITIONS ON ORDINANCE NO. 16-06 AND ORDINANCE NO. 16-07 ALLOWING SHORT TERM RENTALS; DISCUSSION AND/OR ACTION PURSUANT TO ELECTIONS CODE § 9241

IT WAS MOVED BY MAYOR PRO TEM VICZOREK, SECONDED BY MAYOR TOMLINSON, THAT THE CITY COUNCIL ACCEPT THE REPORT FROM THE REGISTRAR OF VOTERS ON THE SIGNATURE VERIFICATIONS FOR TWO PETITIONS ENTITLED, "REFERENDUM AGAINST AN ORDINANCE PASSED BY THE CITY COUNCIL ORDINANCE NO.16-06 AND REFERENDUM AGAINST AN ORDINANCE PASSED BY THE CITY COUNCIL ORDINANCE NO.16-07" AND AUTHORIZED THE APPROPRIATION OF \$16,605.60 FROM GENERAL FUND

UNASSIGNED RESERVE TO THE CITY CLERK PROFESSIONAL SERVICES ACCOUNT (31-2230) FOR THE COST OF THE SIGNATURE VERIFICATION PERFORMED BY THE REGISTRAR OF VOTERS.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY COUNCIL MEMBER SCHOEFFEL, THAT THE CITY COUNCIL DO THE FOLLOWING:

1. RECONSIDER AND REPEAL ORDINANCES 16-06 AND 16-07 **BY** ADOPTING **RESOLUTION 16-11-15-04** ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, RECONSIDERING AND REPEALING ORDINANCE NO. 16-06 ENTITLED:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA13-0001 TO ALLOW SHORT TERM RENTALS IN ALL THE ZONING DISTRICTS WHERE RESIDENTIAL USES ARE ALLOWED AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION; and

RECONSIDERING AND REPEALING ORDINANCE NO. 16-07 ENTITLED:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING SPECIFIC PLAN AMENDMENT SPA13-0001 TO ALLOW SHORT TERM RENTALS IN ALL THE DISTRICTS WHERE RESIDENTIAL USES ARE ALLOWED WITHIN THE SPECIFIC PLAN'S BOUNDARIES, AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0002 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION; and

2. ADOPT A RESOLUTION RESCINDING RESOLUTION 16-05-17-02 AND 16-05-17-03 REGARDING LOCAL COASTAL PROGRAM AMENDMENT LCPA 13-0001 AND LOCAL COASTAL PROGRAM AMENDMENT LCPA 13-0002 AND REQUESTING CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION
3. DIRECT STAFF TO BEGIN WORKING ON A PROCESS TO ALLOW THE COUNCIL AND COMMUNITY TO EVALUATE A MEANS BY WHICH TO ADOPT ZONING REGULATIONS ACCEPTABLE TO THE COMMUNITY THAT WOULD ALLOW SHORT TERM RENTALS AND WHICH COULD BE SENT TO THE COASTAL COMMISSION FOR CONSIDERATION; AND IN THE MEANTIME, CONTINUE TO ALLOW THOSE HOLDING SHORT TERM

RENTAL PERMITS TO OPERATE CONSISTENT WITH THEIR PERMITS IN THE SAME MANNER AS PREVIOUSLY DIRECTED BY COUNCIL, BUT CEASE ISSUING ANY NEW PERMITS UNTIL THE ZONING ISSUES ARE RESOLVED.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

PUBLIC COMMENTS (Continued)

There were no additional Public Comments received.

STAFF REPORTS

COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

CLOSED SESSION (Continued)

Mayor Tomlinson adjourned the meeting to Closed Session at 9:06 p.m.

RECONVENE CITY COUNCIL MEETING – CALL TO ORDER

Mayor Tomlinson reconvened the meeting at 9:16 p.m. All Council Members were present.

CLOSED SESSION ANNOUNCEMENT

City Attorney Munoz stated that he had nothing to report.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Tomlinson adjourned the meeting at 9:16 p.m. and announced that the next Regular Meeting of the City Council will be December 6, 2016, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.