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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
NOVEMBER 15, 2016**

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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 Tomlinson at 5:00 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 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 JOHN A. TOMLINSON, SECONDED BY COUNCIL MEMBER CARLOS N. 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

- 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

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- 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 Â§ 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; Rachel Johnson, Assistant Administrative Analyst; Shelley Velez, HR Manager; Gail Enriquez, City Clerk Specialist; and Bobbi Ogan, Deputy City Clerk.

**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.

He reported that the City has been monitoring the sober living homes and staff has determined that there have been no new homes opened. He stated that there is a home on Camino Capistrano that the City is getting ready to pursue code enforcement action against as a violation of their Conditional Use Permit. He added that there are two on-going litigation matters in Superior Court; one on Evans Pointe in which Sobertec and Sovereign Health had been dismissed from the litigation since they are no longer involved. He stated that there are on-going discussions with the current owner of the property to try and resolve that litigation. He added that staff has engaged in negotiations with the other home on Azul operated by Capo By the Sea. He added that a property on Santa Clara which is a licensed facility had 12 residents and they have agreed to reduce their number to avoid any litigation. He reported that staff was

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reviewing three or four additional homes in the City which are believed to be providing treatment in violation of the State's licensing requirements. He stated that if the investigation demonstrates that they are in violation, then staff would be filing cases against those homes.

**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

Assistant Administrative Analyst Johnson provided a PowerPoint presentation. She reported that after graduating from the Art Center College and Design, Robert Schaar joined the Navy during the Korean War where he painted the Admirals as a staff artist. She stated that after his services in the Navy, Robert began his career in illustrations for professional athletes and teams, as well as illustrating for album covers and movie posters. She added that Robert is part of an elite group of artists that NASA has commissioned to paint the astronauts. She stated that Robert has received many honors for his work including the three gold medals he has won from the California Art Club, the most prestigious art club in the nation. Mayor Tomlinson presented Robert Schaar with a Certificate of Recognition for Schaar Art Studio being named the Business of the Month for November 2016. Heather Johnston, CEO of the Dana Point Chamber of Commerce also presented Robert with a Certificate for his recognition.

Employee of the Month - Bobbi Ogan

City Clerk Ward provided a summary of the duties Bobbi Ogan provides to the City for the City Clerk's Office. Mayor Tomlinson presented Bobbi with a Certificate of Recognition for being named the Employee of the Month for November 2016.

**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 CITY COUNCIL ACCEPT ALL ITEMS ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM 10.

The motion carried by the following vote:

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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, 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**

ADOPTED 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.*

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**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.

Acting City Manager Killebrew introduced the item and Deputy City Manager Denny provided a staff report.

Mayor Tomlinson opened the Public Comments.

Richard Gardner, Capistrano Beach, stated that he was concerned with trees in Pines Park and added that these are not the first trees that have been lost. He felt that staff needed to figure out if this disease is spreading and that he would prefer the City re-plant pine trees. He encouraged the City Council to consider a community advisory group to discuss the issues.

Mayor Tomlinson closed the Public Comments.

IT WAS MOVED BY COUNCIL MEMBER J. SCOTT SCHOEFFEL, SECONDED BY COUNCIL MEMBER CARLOS N. 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:

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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**

Kyle Fraser, Dana Point, spoke about the BevMo! signs that have been installed. He stated that they were told there would not be a big sign at the entrance of the Lantern District. He asked for all signs to be removed except for the west facing sign.

Denise Erkeneff, Dana Point, Surfrider South Orange County Chapter, stated that when the City Council adopted the single use plastic bag ban and Styrofoam ban in 2012, the City worked with Surfrider, businesses, residents, and resorts to make a change. She added that with the passage of Proposition 67 there is now a statewide bag ban for single use that is in effect. She thanked the City Council for their efforts.

Acting City Manager Killebrew stated that staff was preparing a letter to go out to all businesses reminding them the City's Ordinance is still in place.

Dana Yarger, Dana Point, thanked the City Council for their support of the public art project and reported that 500,000 people enjoyed the cows. He stated that they are now on display in Newport Beach.

Council Member Schoeffel stated that the public art and the elephant parade prior to that would not have happened without Dana Yarger and his persistence.

**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**

Acting City Manager Killebrew provided an introduction of the item.

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There being no requests to speak, Mayor Tomlinson closed the Public Hearing.

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

NOES: None

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

Acting City Manager Killebrew provided an introduction of the item and Economic Development Manager Reenders provided a staff report.

Council Member Muller asked for a description of the campaigns the DMO was working on.

Economic Development Manager Reenders replied that they were in the process of evaluating responses to an RFP for marketing plans for the DMO and will be launching a campaign "Lift Your Holiday Spirits" and incentive for two night stays over the holidays.

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Council Member Muller asked Sean Keliiholokai to provide details of how the DMO works and spends the TBID money.

Sean Keliiholokai replied that their job as a destination marketing organization is to create an economic impact for Dana Point and how to bring visitors here. He stated that they market out of the City in hopes of bringing visitors here. He added that they were working on visitor profile studies, a strategic plan, advertising plan and digital campaigns.

Council Member Muller ask if the restaurants would have a voice in the DMO.

Sean Keliiholokai replied that in his experience it is the board that makes the decisions but they like to receive feedback from the stakeholders and constituents to ensure they are representing the destination as a whole.

Acting City Manager Killebrew added while forming the DMO there was discussion of the hoteliers and looking at what other DMO's have done and that it was not uncommon to have associate level memberships. He stated that it would be a "pay to play" membership fee similar to a chamber of commerce.

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

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

NOES: None

## **UNFINISHED BUSINESS**

There were no Unfinished Business items.



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**NEW BUSINESS**

Mayor Tomlinson recused himself from Item 13 due to 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**

Community Development Director Luna-Reynosa introduced Senior Planner John Ciampa who provided a staff report.

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

NOES: None

ABSENT: Mayor John A. Tomlinson

Mayor Pro Tem Viczorek presented the homeowners a plaque to be displayed at their home.

Mayor Tomlinson returned to the Council Chambers at 7:23 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**

Acting City Manager Killebrew provided a staff report and Deputy City Manager Denny provided details of the item.

IT WAS MOVED BY COUNCIL MEMBER J. SCOTT SCHOEFFEL, SECONDED BY COUNCIL MEMBER JOSEPH L. MULLER, 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

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

NOES: None

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

Acting City Manager Killebrew provided a staff report.

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

NOES: None

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

Acting City Manager Killebrew provided a staff report.

IT WAS MOVED BY COUNCIL MEMBER J. SCOTT SCHOEFFEL, SECONDED BY COUNCIL MEMBER CARLOS N. 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:

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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

**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**

Deputy City Manager Denny provided staff report.

Council Member Muller asked if the trolley would have stops in San Juan Capistrano.

Deputy City Manager replied that there was a linkage between trolleys.

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

NOES: 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**

Acting City Manager Killebrew introduced the item. City Clerk Ward provided a summary of the action required.

City Attorney Munoz stated that the first item was not a discretionary item and that the City Council did not have a choice but to receive the report from the Registrar of Voters. He suggested that the Council take action on that item first after public comments are received. He clarified that if the ultimate decision of the Council is

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to go forward with either a general municipal election or a special election that there needs to be action from the Council to authorize payment.

Mayor Tomlinson opened the Public Comments

Mark Rosen, Dana Point, felt that the Council has options in addition to what is laid out in the staff report. He stated that the referendum petitions were not timely and that the Council did not have to take any action. He added that the operative legislative actions were the passage of the LCPAs on May 17, 2016 and that they have legal superiority over the zoning and specific plan ordinances. He stated that reduction of available lodging in the coastal zone would be contrary to the California Coastal Act.

Mary Jeffries, Dana Point, stated that there was enough interest in the community to obtain the signatures and that she does not support allowing short term rentals for only two days. She added that she supports repealing the Ordinances and suggested a subcommittee be created to review this issue.

Buck Hill, Capistrano Beach, felt that the Ordinances would create a bad situation for Dana Point. He shared that when circulating the petitions, that the majority of people they spoke to were not aware of section 5.38 or that short term rentals were allowed in all of the neighborhoods. He stated that the signatures were gathered in 16 days and felt that this issue should be studied.

Barbara Wilson, Dana Point, felt that enforcement of the short term rentals was ineffective. She spoke of the citations and fines that have been assessed. She urged the City Council to go back to the drawing board.

David Spangler, Dana Point, stated that Beach Road was not included in the enforcement of short term rentals and spoke of the complaints that have been generated.

Toni Nelson, Capistrano Beach, spoke of the different calls for service to the addresses of registered short term rentals. She stated that the City needed the input from the neighbors of legal and illegal rentals. She felt that section 5.38 was not working and that it was not successfully stopping illegal short term rentals. She added that the City Council did not have complete or accurate facts when adopting these Ordinances. She asked the Council to rescind the Ordinances and do a comprehensive study on the issue.

Betty Hill, Capistrano Beach, stated that many people will be affected by the Council's decision. She felt that the community needs to be involved in decisions.

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Mark Zanides, Dana Point, felt that staff had misled the City Council when discussing short term rentals and the issues. He stated that this Ordinance allows commercial activity in the residential areas of the city.

Cynthia Carol, Dana Point, described the actions needed to be taken by the City Council before they could ban short term rentals in the coastal zone. She asked the Council to hold off adopting or making changes at this time and felt that there was room for compromise.

Jason Colaco, Dana Point, stated that a repeal of the Ordinances would put the City at odds with the Coastal Commission. He felt that it was important to let both sides get the facts out so the community can make an informed decision. He encouraged the Council to wait and see what happens in Laguna Beach and San Clemente with their Ordinances.

Carol Kelly, Dana Point, asked for Council to repeal the Ordinances as she felt that a future election would be too costly and time consuming. She stated that certain areas were unacceptable for short term rentals.

Deanna Slocum, Capistrano Beach, felt that the signers of the petitions were misled and that they were told that there would be a vote. She encouraged the Council to let the people decide.

Miriam Rupke, Capistrano Beach, read a letter on behalf of Shevy Akason. She asked the City Council to allow the residents to vote.

Susanne Christensen, Dana Point, stated that she has lived next to a short term rental and has never had a problem with this property at all. She added that she has had problems with the long-term rentals.

Alyssa Hendrie, Dana Point, stated that she supports short term rentals.

Angela Hansen, Dana Point, stated that she supports allowing short term rentals. She added that they vacation rent their home for twelve weeks out of the year and that they have never received any complaints. She felt that there were considerable differences between a short term rental and a regular rental on how the properties are maintained. She asked the Council to not throw away all of the work and repeal the Ordinances. She urged the City Council to let it go to a vote.

John Hansen, Dana Point, asked the Council to consider Mr. Rosen's letter and felt that it would be irresponsible to repeal the Ordinances.

Mayor Tomlinson closed the Public Comments.

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Council Member Muller asked Lt. Chilton about the statements regarding calls for service.

Lt. Chilton stated that he would have to look at the data.

Council Member Muller stated that he was going to make a recommendation that the Council repeal the Ordinances. He added that he does not feel comfortable letting the Coastal Commission make decisions on adjustments that need to be made on the Ordinance.

Mayor Pro Tem Viczorek stated that he was going to suggest that the Council address the first recommendation to accept the report from the Registrar of Voters.

City Attorney Munoz clarified that the motion would need to include the authorization to pay for the signature verification that the Registrar had completed on the petitions.

IT WAS MOVED BY MAYOR PRO TEM RICHARD A. VICZOREK, SECONDED BY MAYOR JOHN A. 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 Carlos N. Olvera, Council Member J. Scott Schoeffel, Mayor Pro Tem Richard A. Viczorek and Mayor John A. Tomlinson

NOES: None

Mayor Pro Tem Viczorek felt that the Ordinances were flawed and should never have been passed. He stated that it was not acceptable to make the City wait for a resolution on this issue and that he was not happy with the expense for an election. He stated that he was going to make a motion to rescind the Ordinances and felt that it made sense to include the Resolutions from May 17, 2016 in the rescission as well.

City Attorney Munoz replied that was the correct terminology. He suggested that the motion be to move to reconsider and rescind the

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Ordinance and propose that a Resolution be adopted to rescind the prior Resolutions. He stated that staff would draft a Resolution after the action taken tonight and bring it back to the next meeting to ratify the decision.

Council Member Schoeffel stated that was not agendized for this meeting and felt that the decision was limited to repeal and not appropriate to extend to other actions. He added that he came to the meeting thinking that the Council had the opportunity to repeal the action that it had taken on September 6th or calling for an election. He stated that he would have to object and felt that it was out of order, it is not agendized and would violate due process.

City Attorney Munoz replied that from a legal standpoint that he was not concerned about the issues raised with the exception to the Brown Act.

Council Member Schoeffel asked if the Brown Act did not require specific actions be agendized so that the public could come prepared to remark to them so that the legislative body could consider those remarks.

City Attorney Munoz replied that the Brown Act requires that the agenda provide a description of what is to be addressed and that he was comfortable that the staff report was broad enough to address this issue.

Council Member Schoeffel asked if after the rescission would the City still have an Ordinance that permits and regulates short term rentals.

City Attorney Munoz replied that the City still has an Ordinance, section 5.38 which is still on the books and would not be affected by the action tonight. He stated that the City has taken the position in the past that short term rentals were not allowed per the Zoning Code. He believed that the Coastal Commission may make take the position that the City is not able to interpret the code in a manner that says short term rentals are prohibited. He added that within non-coastal zones the City Council has more authority to act but the repeal of the Zone Text Amendment and Specific Plan Amendment would tie the City's hands for a year before the City could reconsider those issues. He stated that in answer to your question it is really unclear and would have to be addressed going forward.

Council Member Schoeffel asked if after the action taken by the City Council tonight, would short term rentals still be allowed to operate.

City Attorney Munoz replied that staff will need direction from the Council on how to move forward. He stated that in the past people were told that during the Coastal Commission's consideration of the zoning regulations that permits would be issued under the business regulation with the understanding that it was not a vested right. He added that prior to that decision, staff was directed to not address the short term rental issue while the issue was being considered.

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Council Member Olvera stated that he supports Council Member Schoeffel's comments about the agendizing of this issue. He asked if the Council repeals the Ordinances, where does the City go back to.

City Attorney Munoz replied that the Council would go back to May if the Ordinance is repealed. He stated that when an LCPA is submitted to the Coastal Commission, they expect a full package including Resolutions so it is unclear to staff on how they are going to react when the implementing documents are not and cannot be adopted, but the Resolution is still in effect. He felt that the Ordinances and Resolutions should be considered at the same time.

Mayor Tomlinson asked what the term of a short term rental permit was.

City Attorney Munoz replied that they were an annual permit that automatically renewed unless the City determines that there was a reason to revoke them.

Council Member Olvera stated that based on the testimony received tonight that he was leaning toward repealing the Ordinances.

Mayor Tomlinson asked if there was a way to protect those that hold current permits and let them expire naturally. He added that he was leaning towards repealing Ordinances.

City Attorney Munoz replied that staff needs direction with what the Council would want to do with respect to the permits.

Council Member Muller stated that he had also attended the Coastal Commission's workshop on short term rentals and the impression he was given was that cities will not be able to ban short term rentals in the coastal zone. He added that no one has said they want to ban short term rentals all together but felt that the Council needs to take a step back and readdress this issue because times have changed and the industry has changed. He stated that he would support Mayor Pro Tem's motion with amendment. He proposed that the City Council continue to allow permits that have been issued to operate, implement a moratorium on new permits, and work on a new Ordinance with stricter enforcement fines. He stated that he would want to direct staff to investigate why fines are not being paid.

City Attorney Munoz clarified that for time being let those who have permits can continue to operate while the issue is being explored.

Council Member Schoeffel stated that he would support Council Member Muller's motion. He lodged an objection that going back and rescinding the May Resolution is inappropriate under the Brown Act and general principles of due process.



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Mayor Pro Tem Viczorek stated that he agreed with the City Attorney that there have been enough facts presented that there is no Brown Act violation. He added that he would accept Council Member Muller's amendment to the motion.

Council Member Olvera agreed with a moratorium on the issuance of new permits. He asked if the Council was going back to May or not.

Council Member Muller replied that the motion would be going back to further than May to when section 5.38 was passed.

Mayor Tomlinson stated that he would support the motion but agrees with Council Member Schoeffel and would register his objection of the possible Brown Act issues.

City Attorney Munoz replied that the reason he felt that there was no Brown Act issue is that the agenda title was vague enough that it opened up possibilities for the Council, combined with the Resolutions that were included in the staff report. He stated that if there were concerns that the City Council could continue the item and re-agendize the issue with every possible action that could be taken.

Council Member Olvera agreed with Council Member Schoeffel and stated that he was not voting with reservation but felt that there was more on table than was bargained for.

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY COUNCIL MEMBER J. SCOTT 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:*

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*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 Carlos N. Olvera, Council Member J. Scott Schoeffel, Mayor Pro Tem Richard A. Viczorek and Mayor John A. Tomlinson

NOES: None

#### **PUBLIC COMMENTS**

There were no additional Public Comments received.

#### **STAFF REPORTS**

There were no Staff Reports.

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

Council Member Olvera stated that he would turn in his list of meetings attended.

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Mayor Tomlinson stated that he would turn in his list of meetings attended.

**CLOSED SESSION CONTINUED**

Mayor Tomlinson adjourned 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.

**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.

  
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KATHY M. WARD  
CITY CLERK

APPROVED AT THE MEETING OF DECEMBER 6, 2016

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Meetings attended since November 1, 2016:

**Mayor John A. Tomlinson**

|               |   |
|---------------|---|
| November 2 -  | Meeting with Men's Group at The Wellington. |
| November 10 - | Ribbon Cutting at A+ Nail Spa               |
|               | Ribbon Cutting Walk in Clinic/Urgent Care   |

**Council Member Carlos N. Olvera**

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| November 10 | SONGS CEP Meeting |
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