
**CITY OF DANA POINT, CALIFORNIA
CITY COUNCIL REGULAR MEETING MINUTES
MARCH 7, 2017**

CALL TO ORDER

The Regular Meeting of the City Council of the City of Dana Point, California, was called to order by Mayor Lewis at 5:00 p.m. in the City Council Chambers, 33282 Golden Lantern, Dana Point.

ROLL CALL OF CITY COUNCIL MEMBERS:

Present: Mayor Debra Lewis
Mayor Pro Tem Paul N Wyatt
Council Member Joseph L. Muller
Council Member John A. Tomlinson
Council Member Richard A. Viczorek
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 an additional item to Existing Litigation Government Code § 54956.9 (a).

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY MAYOR PRO TEM PAUL N WYATT, THAT THE CITY COUNCIL ADD CITY OF DANA POINT V. HEADLANDS RESERVE LLC, SANFORD EDWARD, ET AL (ORANGE COUNTY SUPERIOR COURT CASE NO. 30-2016-00872051) TO THE EXISTING LITIGATION DISCUSSION.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

- A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION, Government Code § 54956.9 (a), (3 cases)
Name of Case: People v. Pickering; Orange County Superior Court Case No. 16HM10192;
Name of Case: People v. Karns: Orange County Superior Court Case No. 16HM10382
Name of Case: City of Dana Point v. Headlands Reserve LLC, Sanford Edward, et al (Orange County Superior Court Case No. 30-2016-00872051)

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Mayor Lewis 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 Lewis reconvened the meeting at 6:09 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; Matthew Sinacori, Deputy Director of Public Works and Engineering; Mark Sutton, Building Official; Rachel Johnson, Assistant Administrative Analyst; Jackie Littler, Executive Assistant, DyAnne Weamire, Senior Administrative Assistant; and Bobbi Ogan, Deputy City Clerk.

CLOSED SESSION ANNOUNCEMENT

There was no announcement.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Pro Tem Wyatt.

INVOCATION

The Invocation was provided by Pastor David Mattson of Gloria Dei Lutheran Church.

PRESENTATIONS AND PROCLAMATIONS

Business of the Month – UPS Store

Assistant Administrative Analyst Johnson provided a PowerPoint presentation. She reported that the Lockett's opened their franchise in May 1999 as a Mail Boxes Etc. and five years later UPS purchased Mail Boxes Etc. She stated that they offer a wide variety of services and have recently remodeled. She added that they were members of the Chamber of Commerce, Board Members of UPS Cooperative and were very active in Capo Calvary Church. Mayor Lewis presented a Certificate of Recognition to Mike and Jane Lockett for the UPS store being selected as the Business of the Month, March 2017. Heather Johnston CEO of the Dana Point Chamber of Commerce presented Mike and Jane with a Certificate on behalf of the Chamber.

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Boys & Girls Clubs of Capistrano Valley Youth of the Year

James Littlejohn introduced Sarah Arce the Boys & Girls Clubs Youth of the Year and Sarah shared her speech that she would be delivering this Friday for the OC Youth of the Year competition. Mayor Lewis presented Sarah with a Certificate of Recognition for her being selected the Boys & Girls Clubs of Capistrano Valley Youth of the Year.

Boys & Girls Clubs of Capistrano Valley 25th Anniversary

Mayor Lewis presented Executive Director James Littlejohn and Board President Rob Redwitz with a Certificate of Recognition in honor of the Boys & Girls Clubs of Capistrano Valley 25th Year Anniversary.

CONSENT CALENDAR

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY COUNCIL MEMBER TOMLINSON, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS ON THE CONSENT CALENDAR.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

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, FEBRUARY 21, 2017

APPROVED THE MINUTES.

3. PLANNING COMMISSION MEETING MINUTES, FEBRUARY 13, 2017

RECEIVED AND FILED.

4. PLANNING COMMISSION ACTIONS, MEETING OF FEBRUARY 27, 2017

RECEIVED AND FILED.

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5. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR

RECEIVED AND FILED.

6. CLAIMS AND DEMANDS

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

7. MONTHLY FINANCIAL ACTIVITY REPORT, JANUARY 2017

RECEIVED AND FILED THE MONTHLY FINANCIAL ACTIVITY REPORT FOR JANUARY 2017.

PUBLIC COMMENTS

Sima Aziz, Dana Point, spoke regarding short term rental permits. She stated that she was concerned that those who do not already hold a permit were at a disadvantage because they did not know that the City had stopped issuing permits. She felt that there needed to be more transparency on the issue to help homeowners decide what they should do.

Penny Maynard, Dana Point, felt that the UPS store was the best selection for Business of the Month and that she would recommend Mike Lockett and his team to anyone. She reported that she was writing an essay for a national publication regarding the 2016 election in Dana Point including the June Primary, Measures H and I through November and its aftermath. She stated that it will be based on her experience and published documents. She asked if anyone had anything to contribute to please contact her.

Hoiyin Ip, Dana Point, spoke of the City's program "Zero Hero" and stated that she wants to be a part of whatever the City has planned for clean-up. She added that she was supportive of the City imposing a carbon tax.

Council Member Muller stated that the Short Term Rental Ordinance would have to go to the Coastal Commission and that it was out of the Council's hands on how long that would take. He added that it would take a minimum of 18 months once the Ordinance was submitted to the Commission for a decision.

PUBLIC HEARINGS

There were no Public Hearings.

UNFINISHED BUSINESS

There were no Unfinished Business items.

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NEW BUSINESS

8. RESOLUTION TO AMEND THE PURPOSE AND PROCEDURES OF THE CITY'S FINANCIAL REVIEW COMMITTEE

Acting City Manager Killebrew provided a staff report.

Mayor Lewis asked if it was staff's understanding that the committee could review all City financial and operational information, policies and procedures unless the information is protected for reasons of legal confidentiality.

Acting City Manager Killebrew replied yes.

Mayor Lewis stated that this committee does not have authorization but was only investigating and making recommendations. She asked if there was even one member of the committee at a meeting would it be called a workshop open to the public and there would be minutes.

Acting City Manager Killebrew replied that it was his understanding that you could always hold a meeting, but if there was a quorum of the committee it must be publicly noticed, the quorum would need to be present and participate in the discussion. He added that the official results of that meeting would be reflected in the minutes, but if it was just a meeting, there would be no minutes prepared. He stated that the minutes that are prepared reflecting the actions taken by the committee are drafted and approved by the committee, then the minutes are brought forward for the City Council to receive and file.

City Attorney Munoz clarified that this is a Brown Act committee, they can only meet and take action at a properly noticed meeting, that if there was no quorum they could not take action and there would be no minutes prepared if there was no quorum. He stated that individual members do not have authority to do anything, that it is the committee that would be making recommendations and providing advice to the Council.

Mayor Lewis asked about the ability for a committee member to make recommendations if they were the minority.

City Attorney Munoz replied that it would take a majority vote to make recommendations but the minutes would reflect what the minority vote had to say.

Mayor Lewis asked if a minority of the committee could still report to Council.

City Attorney Munoz replied that he was not sure what the Council's expectation was. He stated that the Council does not receive reports from the Planning Commission or any of the other committees. He added that anyone could report to the City Council under Public Comments or the Council could add an item on the agenda to receive reports. He stated that

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it was discussed at the FRC meeting that if after more significant actions occurred then there might be the desire for the committee to come and report to the Council. He added that generally the thought was that minutes would be presented for the Council to track what was going on.

Mayor Lewis stated that she wants to make sure that members of this committee have the opportunity to make suggestions and recommendations.

Mayor Pro Tem Wyatt stated that he was excited that the committee has been formed. He felt that the Council will figure out what works and what does not work as the committee continues to meet. He added that he would like to rely on the committee to look at things that he might miss like trend lines that are coming out. He made a motion to approve the recommended action. Mayor Lewis seconded the motion.

Council Member Muller stated that he was concerned about the lack of ground rules for the committee. He mentioned and held up a copy of the Mayor's article in the Dana Point Times which, to Mr. Miller, seemed to lay out what the committee was going to do before they even met with a series of questions and answers contained in the article. He added that at the meeting, that Ms. Nelson presented the guidelines that the Mayor had set up. He stated that it was obvious that the Mayor was setting up her own guidelines. He felt that the Mayor texting or emailing Ms. Nelson during the meeting should be some sort of Brown Act or ethics violation. He stated that there were five people up here to make a decision and the Mayor could not unilaterally shut them down. He felt that this was not transparent at all.

Mayor Lewis replied that she has a right to an opinion and that at the January 17th Council meeting everyone had agreed to the specific items that she had presented in her original motion to revamp the Financial Review Committee. She stated that at the next council meeting the resolution that was presented to the council only included everything that was already agreed upon in the Mayor's initial motion to revamp the FRC but then the City Attorney had stated that we did not need the resolution and it was determined that the committee should create their own rules. She added that it did not mean that she did not have the right to say what she was envisioning since this was a committee she started and not him. She stated that she has the right to speak to the committee members and as for her article she was asked what was she thinking when she started this committee.

Council Member Muller stated that the Mayor did not start this committee, these five members started the committee. He added that the Council agreed in principle to create this committee and that the idea was for the committee to return with their ideas, not for the Council to impose our ideas on them. He felt that there was unilateral decision-making being made.

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Council Member Viczorek felt that the proposed scope of the committee was too broad and that it could be construed as doing more than he expected. He stated that he supports having a watchdog committee but expected something about the role of the committee and how they would carry that out. He understood the purpose of a watchdog committee was to look for fraud, waste and abuse. He stated that clarification was needed for access to documents as this could get out of control and be a drain on staff if each individual was asking for different things. He appreciated the efforts of the committee but it was their first meeting and it was not realistic to expect them to come back with details. He felt that they should only meet quarterly unless there was a reason to meet more often. He stated that he wanted it clear that this was a watchdog committee and that they were not making policy, just ensuring that the Council were being good stewards of the public's money.

Mayor Lewis stated that the City's financial records were public and could be requested by a Public Records Act Request individually by anyone. She added that this proposed charter was what the committee wanted.

Council Member Tomlinson stated that he shared some of Council Member Muller's concerns regarding the Mayor's involvement in this committee. He asked how the City handled access to the independent auditors before this committee was established.

Acting City Manager Killebrew replied that access to the auditors had been provided to the City Council Members which was started about four years ago.

Council Member Tomlinson asked if the Council Members could still meet with auditors or would they would only meet with the committee.

Acting City Manager Killebrew replied that the auditors would prefer to meet with elected officials and he would not recommend giving up that opportunity for the elected officials.

Council Member Tomlinson asked if it would now be the five Council Members and the five committee members meeting with the auditors.

Acting City Manager Killebrew replied that was correct.

Mayor Pro Tem Wyatt asked if Attachment A was what the committee had laid out as their charter.

Acting City Manager Killebrew replied that the Financial Review Committee had voted 5-0 to accept what had been included in the draft policy. He stated that Member Nelson presented a document that she stated she had discussed with the Mayor and had created the draft. He added that there was a lot of Financial Review Committee discussion on each of the items.

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Mayor Pro Tem Wyatt stated that he did not anticipate that any fraud issues would be discovered and initially felt that quarterly meetings should be enough. He stated that his concern was seeing this for the first time today and that it takes the staff time to get the financials together and the City was now into the third quarter. He felt that monthly meetings would allow the committee to be quicker in their review.

Acting City Manager Killebrew clarified that on February 7, which was five weeks after the quarter had ended there was an agenda item for the second quarter financial update.

Mayor Pro Tem Wyatt stated that each of the quarterly reports would be good focus for the committee to focus on and analyze. He felt that the committee put together the charter and that they would figure it out.

Council Member Muller asked staff how operational information was defined.

Acting City Manager Killebrew replied that operational was a broad term, but from his experience as an auditor it was looking for better, more efficient or effective ways of doing things.

Council Member Muller stated that there needs to be better definition and that he shares the concerns regarding the amount of staff time that would be used for the committee. He added that the Council needs to be sensitive that staff has to support other committees already and that it could get out of control. He felt that as a policy moving forward that this was a brand new committee and they would need to meet more often than quarterly right now, but once they get going they would not need to meet once a month. He stated that he supports quarterly meetings with allowing the committee to meet as needed, and in terms of documents the committee could request it should be a majority vote of what they want to review.

Council Member Muller asked for Brian Porter to come forward for questions. He asked what the reasoning was for meeting with the auditors.

Brian Porter (FRC Chairman) replied that they want to understand how the City has been budgeted over the years and that they agreed to meet monthly to get a good understanding. He stated that there would be transparency putting their actions in the minutes that go to Council. He added that in hindsight it would be important for staff to note how much time they were spending on support of the committee.

Council Member Muller asked why the committee wants to meet with auditors.

Brian Porter replied that they want to see what they are looking at, why they are looking at a particular issue and would add to the transparency.

Council Member Muller asked when they meet with the auditor would it be in a closed session.

City Attorney Munoz replied that would not be an appropriate Brown Act closed session.

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Council Member Muller asked if the City would have to pay the auditor to meeting with the Council and committee members.

Acting City Manager Killebrew replied that it was written in the auditors' scope of work that they would need to offer to meet with the elected officials.

Mayor Pro Tem Wyatt thanked Brian Porter for being willing to serve and help.

Council Member Tomlinson asked for clarification on the comment that the committee would decide what to bring up to the Council that was not in the document.

Brian Porter replied that through their process that as they find something they would send it to Council with their reason. He stated that they would point it out but they could not make decisions.

Council Member Tomlinson stated that Mr. Porter had mentioned that as a committee they would decide what documents they would request from staff and that was not in the proposal.

Brian Porter replied that they would have to agree upon that at their meeting, that the committee needs to come to a consensus of what they want to review. He stated that everything was still a work in progress.

Mayor Lewis stated that after listening to Mr. Porter she was very optimistic that this committee was going to do the work that she anticipated.

Council Member Viczorek asked if Mr. Porter felt that the Council should mandate how often the committee meets.

Brian Porter replied that once the two year budget is passed by the Council a quarterly meeting would be appropriate, that they do need to meet once a month right now to play catch up because the fiscal year end is coming up. Brian Porter stated that he anticipates that the Committee would probably meet more often than once a month in the beginning but eventually need to meet only once a quarter.

Council Member Tomlinson asked if the 4/5th voting requirement was eliminated.

Mayor Lewis replied yes.

Toni Nelson (FRC member), stated that she wanted to clear up any confusion on the process of creating their mandate and mission statement. She added that it was Mayor Lewis' item that Mayor Lewis brought to the Council a month ago so when Member Nelson was appointed to the committee she had reached out to the Mayor for the legal language that she was looking for. Member Nelson stated that the Mayor had complied which Member Nelson took and expanded and added things that she felt should be included. She added that there was nothing untoward and it was done openly and transparently. She stated that she was not the only

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member with ideas that had been brought to the Committee's first meeting and that it was a free flowing and open meeting. Member Nelson offered to show Council member Muller the Mayor's draft of the proposed charter and Member Nelson's draft. Member Nelson also clarified for Council Member Muller that the text sent by the Mayor to Member Nelson was sent because the Mayor thought the meeting was over and had asked "How did the meeting go" and offered to show Council Member Muller the text. Member Nelson did not anticipate using too much of staff's time as so much of the City's information is available on line. She stated that she was very impressed with Mr. Killebrew who is so open and willing to open the books for review. Member Nelson also stated that she was impressed with the Council's commitment to openness and transparency.

Acting City Manager Killebrew clarified that it was member Larry Rolapp who recommended the meeting with the auditors and that the idea for the committee to participate in the bid review process when choosing potential auditors was something Acting City Manager Killebrew had proposed.

FRC Member Nelson stated that this Financial Review Committee was not performing audits, they were looking at a broader overview of the City, finances, trends, reserves, and only if there was a specific request from the Council would they do anything else.

Council Member Muller stated that he was very excited to have Toni Nelson and Buck Hill on the committee as he was very impressed with their respective backgrounds. He thanked Ms. Nelson for coming up and providing clarification.

Mayor Lewis read aloud a letter that was received from Eric H. Woolery, Orange County's Auditor-Controller congratulating the Council on its unanimous decision on the Financial Review Committee. She stated that she wanted the letter to be included in the record and was distributed to the Council (Exhibit A).

Council Member Viczorek wondered why the County Auditor was excited about this committee if it was not auditing. He asked what paragraph 8 meant to staff.

Acting City Manager Killebrew replied that the committee would be reviewing the City's various policies.

Council Member Viczorek stated that he wants it on the record that they were a watchdog and not a policy making body.

Mayor Lewis introduced Committee Member Hill then read from the proposed Committee charter under "Access & Limitations" section that the proposed charter stated "The FRC has no legislative powers and exists solely to advise Council on financial matters."

Council Member Viczorek then made an amendment to the Mayor's motion to approve the FRC's proposed charter to include the following

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amendments: Paragraph 7 "Scope of Work" 7a, and 8 that this is a watchdog committee, access to documents requires the committee to vote to pursue various issues. That the committee meets quarterly unless they vote to meet more often.

Mayor Lewis stated that paragraph 8 of the proposed charter states that the FRC would make recommendations to the City Council and could not make policies. Mayor Lewis added that she was unclear on the amendments being proposed by Council Member Viczorek and asked him to more clearly word his amendment so it was clear what was being voted upon by the Council.

Council Member Viczorek replied that his substitute motion was as follows: indicate that this committee is serving as a watchdog committee not a policy making committee (add to proposed charter 7e and 8 after end of first sentence not in bold). Paragraph 3 entitled "Access and Limitations" that it be a vote of the committee to access documents and that the committee meet quarterly unless they decide otherwise. Access to such documents and information requires a majority vote of the committee. "Organization" - paragraph 11 is to meet quarterly unless the majority of the committee votes to meet more often.

Acting City Manager stated that staff would correct the numbering on the proposed Committee charter and Mayor Lewis suggested consecutive numbering.

IT WAS MOVED BY COUNCIL MEMBER VICZOREK, SECONDED BY COUNCIL MEMBER TOMLINSON, THAT THE CITY COUNCIL ACCEPT THE FINANCIAL REVIEW COMMITTEE CHARTER WITH THE FOLLOWING AMENDMENTS: PARAGRAPH 2E AND 3 AT THE END OF THE FIRST SENTENCE ADD THE FOLLOWING LANGUAGE "THIS COMMITTEE IS SERVING AS A WATCHDOG COMMITTEE NOT A POLICY MAKING COMMITTEE".

PARAGRAPH 6 UNDER ACCESS AND LIMITATIONS ADD THE FOLLOWING LANGUAGE TO THE END OF THE SENTENCE "ACCESS TO SUCH DOCUMENTS AND INFORMATION REQUIRES A MAJORITY VOTE OF THE FINANCE REVIEW COMMITTEE".

PARAGRAPH 12 STRIKE OUT MONTHLY AND SUBSTITUTE WITH QUARTERLY AND ADD THE PHRASE AT THE END OF THE FIRST SENTENCE "UNLESS A MAJORITY OF THE FINANCIAL REVIEW COMMITTEE VOTES TO MEET MORE OFTEN".

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

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IT WAS MOVED BY COUNCIL MEMBER TOMLINSON, SECONDED BY COUNCIL MEMBER MULLER, THAT THE CITY COUNCIL APPROVE AND ADOPT **RESOLUTION 17-03-07-01** WITH THE FINANCIAL REVIEW COMMITTEE CHARTER AS AMENDED ENTITLED:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING THE PURPOSE AND PROCEDURES OF THE CITY'S FINANCIAL REVIEW COMMITTEE.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

9. CITY MANAGER RECRUITMENT STATUS REPORT

Acting City Manager Killebrew provided a staff report.

Mayor Lewis asked since people were just now receiving the brochure, was the deadline of March 17th was enough time for people to respond. She was concerned that 30 days was not enough time.

Acting City Manager Killebrew replied that it was not out of the ordinary and added that the recruiter had been putting out feelers since December. He stated that the Council could change the direction and extend the deadline if they chose to do so.

Mayor Lewis opened the Public Comments.

Mark Zanides, Dana Point, stated that this decision on whom to hire for City Manager may be the most important decision that this Council makes and felt that a search this important should not be limited to 31 days.

Mayor Lewis closed the Public Comments.

Mayor Lewis asked what the process was after the deadline expired.

Acting City Manager Killebrew replied that the recruiter would take a week to screen applications, then conduct preliminary interviews. He stated that the recruiter would then meet with the Council to discuss recommendations the first week of April and that interviews with the Council would be no sooner than April 17. He added that the projected date for a newly appointed City Manager was still to be determined due to the variables.

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Mayor Lewis asked if the Council wanted to interview someone that the recruiter did not choose, would the Council have that ability.

Acting City Manager replied that the City Council would have the ability to make that decision.

Council Member Muller asked what the options were if a qualified candidate was not identified.

Acting City Manager Killebrew replied that another recruitment could be conducted or the Council could hire a different recruiter. He stated that he would need to review the contract to see if there was language included for extended work.

Mayor Lewis recessed the meeting at 8:22 p.m. and reconvened the meeting at 8:29 p.m.

Acting City Manager Killebrew stated that the contract with Bob Murray and Associates does not provide for another recruitment at no cost if the Council does not select a candidate. He added that the contract did state that if the Council were to select someone and they were fired within the first year, then they would conduct another recruitment.

Council Member Tomlinson asked if there was any penalty for extending the timeline.

Acting City Manager Killebrew replied that he would have to check with the consultant.

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY COUNCIL MEMBER VICZOREK, THAT THE CITY COUNCIL RECEIVE AND FILE THE STATUS REPORT.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

10. OVERVIEW OF THE CITY'S MEMBERSHIP IN THE LEAGUE OF CALIFORNIA CITIES

Acting City Manager Killebrew provided a staff report.

Mayor Pro Tem Wyatt stated that he had asked for the report because Council Member Muller had mentioned the ways the City could use the League at the last meeting. He felt that the Council was not using the League as effectively as they could.

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Council Member Muller asked Tony Cardenas to clarify for the Council what the League of Cities does and how the City could become more involved.

Tony Cardenas, League of California Cities, stated that there were various opportunities to get involved including a number of policy committees where the City had representation on two of them. He offered to meet with the City Council directly to review the options. He stated that Dana Point was one of 61 cities in group called the Coastal Cities Issues Group which was currently being revamped. He reported that the League Board had recently appointed Helene Schneider, Mayor of Santa Barbara as the Chair and the City Manager of Pismo Beach was creating a new work plan for the group.

Mayor Pro Tem Wyatt asked if there was a way for Dana Point to interact with the Coastal group.

Tony Cardenas replied that each of the 61 cities would be contacted directly by headquarters and that the League was also working directly with the Coastal Commission. He stated that a new distribution list had been created to send agendas and informational items to the members from the Coastal Commission. He added that any city staff or Council Member could be included on the distribution list.

Council Member Tomlinson asked how many educational seminars and classes does the League offer.

Tony Cardenas replied one annual conference statewide; and then each department has two conferences each throughout the year. He stated that the Orange County Division meets on a quarterly basis.

Council Member Muller felt that the League had a loud voice and that he was excited to be a part of it. He thanked Mr. Cardenas for coming to the meeting. He reported that at Friday's League meeting there had been two Senators and a State Assemblyman in attendance who spoke about what was going on in Sacramento.

Council Member Viczorek asked for more detail on things the League offers to the City that Council Members and staff could take advantage of.

Tony Cardenas replied that they had started using webinars to allow everyone to participate that could not travel to Sacramento. He stated that there were Listserves to email questions to others cities statewide.

Council Member Viczorek asked how the topics of the webinars were decided.

Tony Cardenas replied that the webinars were hosted by individual departments and that direction was provided by the Board of Directors.

Mayor Lewis asked where the coastal subgroup meets and when.

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Tony Cardenas replied that it was being formulated in the work plan by the Mayor of Santa Barbara and the City Manager of Pismo Beach.

Mayor Lewis asked if there were meetings in person.

Tony Cardenas replied yes.

IT WAS MOVED BY COUNCIL MEMBER VICZOREK, SECONDED BY COUNCIL MEMBER MULLER, THAT THE CITY COUNCIL RECEIVE AND FILE THE OVERVIEW OF THE CITY'S MEMBERSHIP IN THE LEAGUE OF CALIFORNIA CITIES.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

11. MID-FISCAL YEAR 2016-17 BUDGET STATUS REPORT

Acting City Manager Killebrew provided a staff report.

Council Member Viczorek asked for clarification of the decrease for building plan check revenues.

Acting City Manager Killebrew stated that there appeared to be a typo on page 4 and that the paragraph was not correct. He referred the Council to page 9 for a better understanding. He clarified that now that he had a chance to review, page 4 was a year-to-date comparison and on the subsequent pages the items listed were what staff was asking for adjustments.

Mayor Lewis opened the Public Comments.

Steve Stewart, Dana Point, spoke of the 3 Million Dollar increase in the budget and the deficit in the ending balance. He stated that there had been a sequence of seven years of deficits before the City turned a surplus last year. He asked the Council to rather than agreeing to raise the budget 3 Million Dollars to consider when the City does not have the TOT levels where they are now. He reported that the Dana Point Police Services contract has a cost of \$319 per capita which was the highest number of any other city and that Mission Viejo was \$174 in comparison. He asked the Council to spend less of the resident's money.

Acting City Manager Killebrew asked for Mr. Stewart to look at page 3 of the staff report and he explained the reasons for the increases. He stated that staff expected

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to start the year with 15.685 Million but the City started with 20 Million due to some projects that were not started and the City Council re-appropriated the funds. He added that one of the projects was for the Police station build out and in addition there was a surplus last year which the Council appropriated to Capital Improvements. He stated that the expenditures listed in this report had already been approved by Council.

Mark Zanides, Dana Point, felt that it was not a good idea to change the budget in the last few months of the fiscal year and add to the debt to spend money on an on-going project. He stated that it was not appropriate to start spending money the City does not have. He recommended that the Council spend money on settling cases instead of litigation and to direct the City Manager to publish a report about why the legal bills had gone over budget. He asked the City Council to not approve that expenditure tonight.

Mayor Lewis closed the Public Comments.

Council Member Tomlinson asked for an explanation for the increase in City Attorney budget.

Acting City Manager Killebrew replied that it was a projection to complete the fiscal year. He explained city prosecutor efforts were higher, code enforcement issues not typical of the past, Strands Local Coastal Program Amendment processing, prosecution of sober living homes that began this year, election year with ballot measures, and a referendum with extra legal work. He stated that some items were reimbursable. He added that the effort was out of staff's control where the City was responding to complaints.

Council Member Tomlinson asked what impact the City Manager transition had in the legal fees.

Acting City Manager Killebrew replied that there were costs incurred for the transition for the City Manager's retirement in lieu of termination.

Mayor Lewis asked about the money spent on the ballot measures that was not anticipated.

Acting City Manager Killebrew replied that it was money not anticipated when the two year budget was established and that he did not know how much was spent specifically on legal fees for ballot measures.

Mayor Lewis asked if there was money left in City Attorney's budget and was staff looking at One Million plus being an anomaly for this particular year or does staff see this as going to be the normative that Council should be budgeting for.

Acting City Manager Killebrew replied yes there was still money left in the budget. He stated that it would depend on what the Council has the City Attorney working on.

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Mayor Lewis asked if staff thought that \$700,000 was going to be enough in the next budget.

Acting City Manager Killebrew replied that it would depend on the sober living efforts and the issues with medical marijuana.

Mayor Lewis asked why there was nothing budgeted for risk management.

Acting City Manager Killebrew replied that typically the City does not budget for litigation.

Mayor Lewis asked if it was a policy to not budget for litigation.

Acting City Manager Killebrew replied that the City has no anticipated litigation in the budget.

Mayor Lewis asked if the City was not in litigation with the Headlands two years ago.

Acting City Manager Killebrew replied that those fees were reimbursable.

Mayor Lewis asked if the \$300,000 increase was due to the Headlands.

Acting City Manager Killebrew replied yes.

Mayor Lewis asked about the plan check fees mentioned on page 4.

Acting City Manager Killebrew replied that those were year-over-year comparisons so compared to where the City was last year, there was a decrease. He explained when the budget is prepared for planning, building and engineering fees, staff can not anticipate historic highs in plans being submitted and permits being pulled. He stated that the revenue budget has been fairly low and staff has adjusted them up as the revenue shows an increase.

Mayor Lewis asked if the building plan check fees were associated with the engineering professional consulting contracts the City had engaged.

Acting City Manager Killebrew replied that the City does have contracts in place for senior planners that might be processing some of this activity after the plan check as well contracts to augment the Building Department.

Mayor Lewis asked if the revenue that is down \$123,000 is this taken into account.

Acting City Manager Killebrew explained how the City uses the deposits that are taken in from projects and reimburses from actual costs incurred.

Mayor Lewis asked if the City's reimbursements actually reimbursed the City for the actual costs expended.

Acting City Manager Killebrew replied that in a lot of cases no, the City's fees have not been changed in eighteen years.

Mayor Lewis asked if that was something that staff would be bringing forward to the City Council.

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MARCH 7, 2017**

Acting City Manager Killebrew replied that staff has a completed fee study that has been prepared and was one of the items that he was going to suggest to the Finance Review Committee at their next meeting.

Mayor Lewis asked why the developer expenditure revenue was down.

Acting City Manager Killebrew replied that the year-over-year actual revenue was down and felt that it could be a timing issue. He stated that revenue was still at historic levels for activity.

Mayor Lewis asked if this information could be included with future budget requests for the Council.

Acting City Manager Killebrew replied that staff could try and pull something together but it would be project specific.

Mayor Pro Tem Wyatt stated that if the run rate for the City Attorney was going to be One Million Dollars instead of \$700,000, then the Council needs to either change something or move something. He felt that there was a need to break out the carry forwards so it does not look like the budget took a big hit and he would like to make it easier to trace the money back. He stated that the restrooms and the microfilm conversion were projects that needed to be completed. He asked if the City would be better off in terms of the costs for the remodel to tag it onto the tail end of the substation work, and asked if it could be added back into their scope of work.

Director of Disaster Preparedness & Facilities Rose replied that he had asked the contractor if they would honor the original quote as a change order and they said they would.

Mayor Pro Tem Wyatt stated that it was \$80,000 the City did not have but after taking a tour of the restrooms, he agreed that they needed to be remodeled.

Council Member Tomlinson asked if our restrooms were ADA compliant.

Director Rose replied that they were existing nonconforming and that there were some changes that needed to be made.

Mayor Lewis asked staff how confident they were that the \$80,000 would be enough for the project.

Acting City Manager Killebrew replied that he was confident that the bathrooms would be completed with that amount. It was clarified that Council was not approving actual spending of \$80,000 but only that \$80,000 be budgeted for the project at this time to allow for bids.

Council Member Muller asked where the \$80,000 number came from if it was not coming from the original contract.

Director Rose replied that he based it on the original request for the women's bathroom and used the original bid with some modifications.

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Mayor Lewis asked if the reason staff would use the same contractor is because they were still on site.

Director Rose replied that staff has not been out to bid for this project since he did not have the funds.

Acting City Manager Killebrew added that this was an estimate for the project, not authorization or presenting a contract for the work. He stated that if staff adds this work back into the contract for the Police Services station, staff may have to return to Council with that contract to amend it if the spending authority was not within the contingency already provided.

Council Member Viczorek stated that staff was estimating \$80,000 and asked if that could shift dramatically or was this just the outside figure.

Director Rose replied that the individual numbers may shift internally but that the \$80,000 is what staff was anticipating for the maximum amount for the project.

Council Member Viczorek stated that this is the sort of thing he would expect the Financial Review Committee to look into.

Director Rose replied that he would feel comfortable with their review of the project after actual bids have been received.

IT WAS MOVED BY COUNCIL MEMBER TOMLINSON, SECONDED BY MAYOR PRO TEM WYATT, THAT THE CITY COUNCIL RECEIVE AND FILE THE FISCAL YEAR 2016-17 BUDGET STATUS REPORT AND AUTHORIZE THE BUDGET AMENDMENTS DETAILED WITHIN THIS REPORT.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

12. EMERGENCY DEMOLITION AND ABATEMENT OF THE DANA POINT HARBOR INN LOCATED AT 25325 DANA POINT HARBOR DRIVE

Acting City Manager Killebrew provided staff report.

Mayor Lewis asked how the reimbursement was memorialized with the property owner.

City Attorney Munoz replied that staff had been working with the property owner and their attorneys and they had provided written assurances that they were agreeing in advance to reimburse the City.

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Mayor Lewis asked if the City can put a lien or has put a lien on the property.

City Attorney Munoz replied that he believes a notice of pendency has been recorded on the property but when the demolition is complete, a lien is recorded for the costs incurred but a lien would not need to be recorded if they reimburse the City right away.

Mayor Lewis asked when the City could expect to be reimbursed.

City Attorney Munoz replied that the reimbursement should take place within 30 days.

Community Development Director Luna-Reynosa added that the property owners did not want a lien on the property, but if they do not pay within a reasonable amount of time, the City would threaten to put a lien on the property. She felt confident that the lien would not be required.

Mayor Lewis asked if there was a lien, how the City collects.

City Attorney Munoz replied that the City would have a number of different options including a judicial or non-judicial foreclosure on the property, or conversion to a tax lien which would give the City priority over bank loans or mortgages.

Mayor Lewis asked if the owner had indicated what they want to do with this property.

City Attorney Munoz replied that it was fairly clear that they hope to develop a hotel at the site.

Mayor Lewis asked if the property was zoned anything other than a hotel.

Community Development Director Luna-Reynosa replied that the allowed uses included a hotel or a hostel. She stated that there were other uses that were not as preferred but were allowed.

IT WAS MOVED BY COUNCIL MEMBER TOMLINSON, SECONDED BY MAYOR PRO TEM WYATT, THAT THE CITY COUNCIL RATIFY THE CONTRACT ASSOCIATED WITH THE EXECUTION OF THE EMERGENCY HAZARD ABATEMENT ORDER FOR THE SUBSTANDARD/DANGEROUS BUILDING ISSUED FOR THE DANA POINT HARBOR INN PROPERTY, LOCATED AT 25325 DANA POINT HARBOR DRIVE IN DANA POINT (LANTERN DISTRICT).

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

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13. ESTABLISH MAYOR OFFICE HOURS AT CITY HALL

Mayor Lewis provided a staff report. She asked if there could be space made available to meet with the public and a staff person designated to schedule the appointments for the Council members.

Acting City Manager Killebrew replied that it would be a direction of the Council to have staff available to coordinate calendars.

Mayor Lewis opened the Public Comments.

Penny Maynard, Dana Point, stated that she was happy to see City Council office hours being proposed as it would help connect the elected officials with the residents and City staff. She suggested that the hours be scheduled for any day except for Fridays as she felt that many would not be able to participate due to weekend plans. She asked if a written response could be provided within a certain time frame for any concerns that were discussed. She asked how the public would be notified of the day selected by the Council members.

Mayor Lewis replied that the Council Members have email and that she responds to every message she receives.

IT WAS MOVED BY MAYOR LEWIS, SECONDED BY MAYOR PRO TEM WYATT, THAT THE CITY COUNCIL ALLOW THE MAYOR AND ANY OTHER COUNCIL MEMBER TO ESTABLISH OFFICE HOURS AT CITY HALL AND DIRECT STAFF TO IDENTIFY A POINT OF CONTACT FOR THE MAYOR AND OTHER CITY COUNCIL MEMBERS TO COORDINATE SCHEDULING MEETINGS AS WELL AS NOTIFY THE PUBLIC OF THEIR AVAILABILITY.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

NOES: None

PUBLIC COMMENTS

There were no additional Public Comments received.

STAFF REPORTS

There were no Staff Reports.

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COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Council Member Muller reported that he had attended the League of Cities meeting on Friday and one of the issues discussed was SB54 being proposed by the Speaker Pro Tem DeLeon which is proposing that California become a sanctuary state. He added that the State of California receives about one hundred billion dollars in federal funding and felt that it was not appropriate that Sacramento mess with local government's federal funds. He stated that it should not be mandated that Dana Point become a Sanctuary City. He encouraged everyone to pay close attention to what was going on in Sacramento. He stated that he would turn in his list of meetings attended to the City Clerk.

Mayor Pro Tem Wyatt stated that he had turned in his list of meetings attended to the City Clerk.

Mayor Lewis stated that she would turn in her list of meetings attended to the City Clerk.

Council Member Tomlinson stated that he would turn in his list of meetings attended to the City Clerk. He reported that he had attended the Festival of Whales parade this past weekend and thanked all those involved for putting the event on.

ADJOURNMENT

There being no further business before the City Council at this session, Mayor Lewis adjourned the meeting at 9:50 p.m. and announced that the next Regular Meeting of the City Council will be March 21, 2017, 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 MARCH 21, 2017

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Meetings attended since February 21, 2017:

Mayor Debra Lewis

February 23 Darrell Issa
February 28 Col. George Schreffler 5th Marine Support Group
March 1-3 League of Cities Planning Commissioners Academy
March 7 Supervisor Bartlett

Mayor Pro Tem Paul N Wyatt

February 23 U.S. Congressman Darrell Issa, Dana Point, CA
February 24 UCI Public Policy Making Academy, Irvine, CA
February 28 Ocean Water Quality Subcommittee Meeting, Dana Point, CA
5th Marine Regiment Support Group Hail & Farewell Dinner, Dana Point, CA
March 1 Planning Commissioners Academy, Los Angeles, CA
March 2 Planning Commissioners Academy, Los Angeles, CA
March 3 UCI Public Policy Making Academy, Irvine, CA
March 4 Festival of Whales Parade, Dana Point, CA
March 6 Ocean Institute Management, Dana Point, CA
March 7 OC Supervisor Lisa Bartlett, Santa Ana, CA

Council Member Joseph L. Muller

February 23 OCFA
Curt Pringle
February 28 Hobie Kickoff
March 1 LVA
March 3 League of Cities
March 4 Festival of Whales

Council Member John A. Tomlinson

March 4 Festival of Whales Parade and Luncheon

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MARCH 7, 2017**

EXHIBIT A



ERIC H. WOOLERY, CPA
AUDITOR-CONTROLLER

CITY OF DANA POINT

2017 FEB -6 A 10:59



RECEIVED
CITY CLERK'S DEPARTMENT

January 31, 2017

The Honorable Debra Lewis
and the Dana Point City Council
City of Dana Point
33282 Street of the Golden Lantern
Dana Point, California 92629

DISTRIBUTION: 2/6/17

D. LEWIS
J. MULLER
J. TOMLINSON
R. VICZOREK
P. WYATT
M. KILLEBREW

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Dear Mayor Lewis and Members of the City Council:

I was very pleased to learn that the Dana Point City Council unanimously supported taking steps to expand the role of the city's Financial Review Committee.

As Orange County's elected Auditor-Controller, I take my own role as our Taxpayer Watchdog seriously. That's why I believe the transparency of and accountability for our public finances are so critical. By recognizing these two principles and taking meaningful action to address them, you are indeed working to build an environment of openness and trust for Dana Point taxpayers.

Thank you again for working to strengthen the public's confidence in our local municipal finances. Please feel free to consider me a resource in County government. I hope you'll contact me directly if I can ever be of assistance to you or our mutual constituents.

Sincerely,

Eric H. Woolery, CPA
Auditor-Controller
County of Orange

EHW:ak