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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
April 18, 2017**

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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 Lewis at 5:02 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 (Arrived at 5:15 p.m.)  
Council Member Richard A. Viczorek  
Absent: None

**CLOSED SESSION**

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

- A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Government Code § 54956.9 (d1), (1 case);
- B. CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION, Government Code § 54956.9 (a), (1 case) Name of Case: City of Dana Point v. Headlands Reserve LLC, Sanford Edward, et al; Orange County Superior Court Case No. 30-2016-00872051

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 6:27 p.m.

STAFF PRESENT: Patrick Munoz, City Attorney; Mike Killebrew, Acting City Manager; Kathy Ward, City Clerk; Aaron Rosen, Emergency Services Coordinator; 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;

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Kelly Reenders, Economic Development Manager; Mark Sutton, Building Official; Rachel Johnson, Assistant Administrative Analyst; Jackie Littler, Executive Assistant, DyAnne Weamire, Senior Administrative Assistant; Bobbi Ogan, Deputy City Clerk; and Gail Enriquez, City Clerk Specialist.

## **CLOSED SESSION ANNOUNCEMENT**

City Attorney Munoz reported that there are no reportable items for discussion from Closed Session.

## **PLEDGE OF ALLEGIANCE**

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

## **INVOCATION**

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

## **PRESENTATIONS AND PROCLAMATIONS**

### Business of the Month - Girl in the Curl

Rachel Johnson, Assistant Administrative Analyst provided a PowerPoint presentation. She reported that Mary Hartman, owner and former surf instructor, opened the first "Girls Only" surf shop in 1997. She stated that Girl In the Curl, not only having their own label, also provides surf lessons and camps where participants get individual attention from instructors and lessons include an emphasis on water safety and ocean awareness. She reported that Mary extends her generosity to the community having offered free lessons to disadvantaged children, participates in the Doheny State Beach Interpretive Association and the Zero Trash Dana Point Program. Mayor Lewis presented with a Certificate of Recognition for being selected Business of the Month. Heather Johnston presented Mary with a certificate, on behalf of the Chamber of Commerce, as well.

### Donate Life Month - Dick Veale

Mayor Lewis introduced Dick Veale. Dick stated that he would like to encourage residents and members of the Council to register as a donor at the DMV and get the pink dot on their driver's license. Mayor Lewis presented Dick with a Proclamation for Donate Life Month.

Mayor Lewis moved Item 23 to Presentations and Proclamations.

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**23. RECOGNITION OF LANTERN VILLAGE ASSOCIATION 25TH ANNIVERSARY**

Council Member Joseph L. Muller provided a report about the Lantern Village Association (LVA) and introduced the President of the LVA, Robin Bias to provide a background of the Association.

Mayor Lewis thanked the Association for the great work they have done.

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY COUNCIL MEMBER VICZOREK, THAT THE CITY COUNCIL APPROVE THE 25TH ANNIVERSARY OF THE ESTABLISHMENT OF THE LANTERN VILLAGE ASSOCIATION BY PLACEMENT OF A DECORATIVE PLAQUE AT LA PLAZA PARK, AND THAT THE ASSOCIATION WORK WITH CITY STAFF ON THE LANGUAGE FOR THE PLAQUE.

The motion carried by the following vote:

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

NOES: None

**CONSENT CALENDAR**

Mayor Lewis removed Item 10 from the Consent Calendar.

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY COUNCIL MEMBER RICHARD A. VICZOREK, 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:

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

NOES: None

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**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, MARCH 21, 2017**

APPROVED THE MINUTES.

**3. SPECIAL MEETING MINUTES, MARCH 29, 2017**

APPROVED THE MINUTES.

**4. PLANNING COMMISSION MEETING MINUTES, FEBRUARY 27, 2017**

RECEIVED AND FILED.

**5. PLANNING COMMISSION MEETING MINUTES, MARCH 27, 2017**

RECEIVED AND FILED.

**6. PLANNING COMMISSION ACTIONS, MEETING OF APRIL 10, 2017**

RECEIVED AND FILED.

**7. OCEAN WATER QUALITY SUBCOMMITTEE MINUTES, FEBRUARY 28, 2017**

RECEIVED AND FILED.

**8. MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR**

RECEIVED AND FILED.

**9. CITY TREASURER'S REPORT, MARCH 2017**

RECEIVED AND FILED THE CITY TREASURER'S REPORT FOR THE MONTH OF MARCH, 2017.

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**10. CLAIMS AND DEMANDS**

Mayor Lewis stated that she cannot tell what the order is and sometime things repeat. She requested that the report be sorted by Payee.

Acting City Manager reported that it is currently sorted by check number, but he will request staff to sort by payee.

Mayor Lewis inquired who Professional Parking is.

Acting City Manager Killebrew replied that they are the City's trolley operator.

Mayor Lewis also inquired about two P.I.O.'s and assumed they are Public Information Officers - Chris Cardenas dba SocTV.

Acting City Manager Killebrew stated that he is the man behind the camera.

IT WAS MOVED BY MAYOR PRO TEM PAUL N. WYATT, SECONDED BY COUNCIL MEMBER JOSEPH L. MULLER, THAT THE CITY COUNCIL RECEIVE AND FILE THE CLAIMS AND DEMANDS.

The motion carried by the following vote:

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

NOES: None

City Clerk Ward read the titles of the ordinances listed on the agenda (Items #11 and 21).

**PUBLIC COMMENTS**

Stephen Wontrobski, Mission Viejo, presented how to save money by cutting OCFA costs by employing a public/private model. He suggested the City switch to CalFire versus OCFA and switch to private EMS services. He suggested that he would meet face to face with members of City Council to show presentation of how to save money with cost saving ideas.

Paula Becker, Dana Point, Pet Project Foundation volunteer reported on the Foundation's kitten fostering, a life-saving program. She invited everyone to attend the annual kitten foster training on Thursday, April 27th at 7pm at Veterinary Medical and Surgical Group in San Juan Capistrano. She encouraged families to join the kitten fostering program, especially for those who cannot adopt a pet. She added that additional information or to

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register for the training to call Pet Project Foundation at (949) 595-8899 or call the shelter at (949) 492-1617 or visit the website at [petprojectfoundation.org](http://petprojectfoundation.org).

Robbie Roberson, Dana Point, invited everyone to participate in the Hobie Memorial Golf Tournament on May 22nd at The Ranch. He stated that he would like to put out a challenge to the City and South Coast Water District. He added that additional information can be found on their website at [HobieMemorial.com](http://HobieMemorial.com).

Pete Hammer, Dana Point, 14 years servicing the Dana Point 5th Marine Regiment Support Group. He congratulated and thanked the City and the City Council for the outstanding work and support of all the military non-profit organizations in the City that has helped many wounded veterans and their families through outreach programs. He thanked the Council for the donation of \$10,000 Vietnam Memorial Fund.

Carol Wilson, Capistrano Beach, stated that she is in support for Neighborhood Watch. She stated she was a prior watch captain and she would like to find out how to get additional neighborhoods and support for a watch program.

Penny Maynard, Dana Point, proposed that she would like the City to move to district elections. She suggested that by doing so there would be better representation on City Council of areas of the City. She also proposed that the word "Beach" added to the name of Dana Point and stated that it would help emphasize the location of the city to help attract visitors and help increase tourism. She reported that she recently participated in a webinar regarding restaurant Business Improvement District (BID). She felt that with all the new restaurants in the city, the establishment of a Restaurant BID would benefit the City.

Susan Hinman, Dana Point stated that she watched the video of the Council meeting on March 21<sup>st</sup> and it was a painful experience and huge difference with SCWD's meetings. She stated that she was astounded that in Item 16 concerning Neighborhood Watch, the Sheriff stated it was "out of the ordinary" for elected officials to get involved. She questioned "why" that would be the case and said Neighborhood Watch would benefit everyone and asked Council to reconsider item 16. She stated she would support any mayor working with the Sheriff and encouraged Council to stop the polarization.

Dana Yarger, Dana Point, reported that he would like to provide another perspective of the unanimous decision by the Planning Commission to allow the Sprint towers (antennas) that are going up on Del Prado. He submitted for record to the City Clerk photos and perspective from an architectural review stand point.

Brad Fowler, Irvine, as a board member of the Dana Point Community Cycling Foundation, invited everyone to participate in the Dana Point Grand Prix which will take

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place on Sunday, April 30th with the first race beginning at 7am and finish at 6pm. He reported that it is a charitable event that supports the 5th Marine Support Group & the Boys and Girls Club. He stated that more information is available at [danapointgrandprix.com](http://danapointgrandprix.com).

## **PUBLIC HEARINGS**

- 11. CALIFORNIA COASTAL COMMISSION SUGGESTED MODIFICATIONS TO THE CITY'S APPROVED GENERAL PLAN AMENDMENT GPA16-0001, ZONE TEXT AMENDMENT ZTA16-0001, AND LOCAL COASTAL PROGRAM AMENDMENT LCPA16-0001, TO AMEND THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN (HDCP), TO ADDRESS PUBLIC ACCESS OVER SPECIFIED ACCESSWAYS IN THE RESIDENTIAL PORTION OF THE HEADLANDS DEVELOPMENT AND CONSERVATION PLAN AND THE USE OF THREE ROPES OR SIMILAR DEVICES**

Planning Manager Matt Schneider provided a staff report.

Mayor Lewis opened Public Comments.

David Dodson, Dana Point, stated that he does not support ropes to block access to beach access. He felt that it does not provide any advantage to City or its residents, and he discouraged the City from adding the ropes since it does not provide a benefit.

Cristine Lindenfesler, Dana Point, stated that she is in favor of the ropes. She stated that the Homeowners have never had control of HOA until last November. On behalf of the Strands community, she encouraged the Council to continue to work with the Coastal Commission in support of the restricted after-hours access at the mid-access path. She requested that the homeowners are notified on next Coastal Commission Hearing regarding this issue.

Michelle Hanon, Dana Point, stated that her concern of the safety of the stairs at the mid-access entrance to the Strands. She stated that she supports the ropes as it provides a visible barrier in order to avoid a trip/fall liability of anyone going down the stairs in the evening.

Ashok Dhingra, Dana Point, pointed out that access to beach is available 24/7 on both sides of the beach and that a physical barrier, whether a rope or any other mechanism, is necessary to provide a safety for anyone who wants to go up and down the stairs. He encouraged the Council to continue to work with the Coastal Commission to continue to provide this safety for the well-being of the citizens and community.

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Mayor Lewis closed the public comments.

Mayor Lewis asked if the Council has to have a hearing at the Coastal Commission and if these are approved modifications is it this automatic or do we have to go back and do something else.

City Attorney Munoz replied that presuming the council approves the Resolution, it goes back to the Coastal Commission for Director Certification and is placed on their agenda as a notice item and there are no additional hearings before the Coastal Commission.

Mayor Lewis clarified that if we accept this modification, it is approved by the Coastal Commission and we are done with it.

City Attorney Munoz replied yes that this has already been approved by the Coastal Commission and that the Council must also approve it in order for it to move forward.

Director Luna-Reynosa added that it is to approve the Amendment to the Local Certified Coastal Plan, but to actually approve the mechanism or rope, it will require a Coastal Development Permit and would require a local hearing, and being approved in the Amendment to the Local Coastal Plan (LCP).

Mayor Lewis asked what is considered a local hearing.

Director Luna-Reynosa replied that is a hearing before the City's Planning Commission and they would approve the Coastal Development Permit that would enable the rope. She also stated that the Planning Commission's decision is appealable to the City Council and the Coastal Commission since it is in their jurisdiction.

Mayor Lewis clarified that this is for the mid-Strands access that goes through the Homeowners Association.

Director Luna-Reynosa replied yes.

Mayor Lewis addressed Mr. Dodson's point by stating that she and Chief Chilton addressed this issue along with others with the Strands Homeowners Association. She stated that while her initial thought was to not support the rope, she felt that there was merit to having the rope at the mid-access point since there is still beach access at both ends. Mayor Lewis stated in speaking with the homeowners, she understood the rationale that while a person violating the hours could state that he/she simply did not see a sign and avoid enforcement consequences, a rope across the opening was clear that access was not permitted.



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Council Member Tomlinson asked what the effect would be if the Council did not approve the recommended action and asked if the hours remain in effect as a separate action.

Planning Manager Schneider stated that the openings would remain at their current dimensions and if no action is taken by May 6th, the LCPA would sunset and the action would have to start from the beginning and yes, the hours would remain in effect.

IT WAS MOVED BY COUNCIL MEMBER RICHARD A. VICZOREK, SECONDED BY COUNCIL MEMBER JOHN A. TOMLINSON THAT THE CITY COUNCIL ADOPT **RESOLUTION 17-04-18-01** entitled:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, REGARDING GENERAL PLAN AMENDMENT GPA16-0001 AND LOCAL COASTAL PROGRAM AMENDMENT LCPA16-0001 TO AMEND LAND USE POLICY 5.31 AND REQUESTING CERTIFICATION OF LOCAL COASTAL PROGRAM AMENDMENT LCPA16-0001 BY THE CALIFORNIA COASTAL COMMISSION; and*

INTRODUCE FOR FIRST READING AN ORDINANCE ENTITLED:

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

The motion carried by the following vote:

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

NOES: None

## **UNFINISHED BUSINESS**

### **12. DOHENY VILLAGE PLAN UPDATE**

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Director Luna-Reynosa provided a staff report.

IT WAS MOVED BY COUNCIL MEMBER JOHN A. TOMLINSON, SECONDED BY COUNCIL MEMBER RICHARD A. VICZOREK, THAT THE CITY COUNCIL RECEIVE AND FILE THIS REPORT.

The motion carried by the following vote:

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

NOES: None

**13. 2017 ABATEMENT PROGRAM, AUTHORIZATION TO ABATE WEEDS**

Director Luna-Reynosa provided staff report.

Council Member Tomlinson asked how many people have complied with the weed abatement program.

Director Luna-Reynosa stated that there have been residents that have complied and abated their own properties, but as far as how many, she does not have that information.

IT WAS MOVED BY COUNCIL MEMBER JOHN A. TOMLINSON, SECONDED BY COUNCIL MEMBER RICHARD A. VICZOREK, THAT THE CITY COUNCIL HEAR ANY OBJECTIONS REGARDING WEED ABATEMENT AND THAT THE CITY COUNCIL ADOPT **RESOLUTION 17-04-18-02** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, HEARING NO OBJECTIONS AND PROCEEDING WITH WEED ABATEMENT.*

The motion carried by the following vote:

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

NOES: None

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**NEW BUSINESS**

**14. FINANCIAL REVIEW COMMITTEE MINUTES, MARCH 27, 2017**

A. Mayor opened the discussion for this item.

Mayor Lewis opened public comments regarding the minutes.

City Clerk Ward reported that there are Public Comments; however, they are for Part B of this Item.

Mayor Lewis closed the comments regarding the minutes.

Council Member Tomlinson asked the Acting City Manager Killebrew if the Financial Review Committee has had time to verify the numbers on these reports that have been provided.

Acting City Manager Killebrew answered that the numbers, for the most part, came out of the City's Comprehensive Annual Financial Report and there were some adjustments made to the report. He reported that the Committee received the report on March 27th and the committee directed him to meet with Ms. Nelson to discuss concerns with report. He met with Ms. Nelson and pointed out that there were anomalous events that would affect trend analysis. He suggested that rather than looking at total governmental funds, if we target only the General Fund, it would provide a different picture. He stated that at the request of the Financial Review Committee, the report in its entirety be attached to the Minutes, as it was the best way to communicate it to the Council, but he felt that the Committee was not ready to make any recommendations based on this report.

Council Member Tomlinson asked that Acting City Manager provide comment on the Summary of Financial Overview.

Acting City Manager pointed out the anomalies that are part of the summary. He stated that he agreed with Ms. Nelson that revenues and expenditure trends are getting ready to cross and we need to start working on those.

Mayor Lewis asked if these reports are audited, and were there any notations or comments and items taken out that were, in fact, anomalies.

Acting City Manager Killebrew replied yes, they are audited. He stated that the picture Ms. Nelson looked at was for all funds, but that you have to focus on the General Fund and not look at all the funds. He stated that he is in the

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midst of preparing a report to the Financial Review Committee, and will be provided to the Council to show how the numbers are going to bounce around and look at the trends of the total funds to generate questions; however, you must look at the General Fund alone to look at the overall financial health of the City.

Mayor Lewis invited Toni Nelson to speak to the Council regarding the report.

Toni Nelson, member of the Financial Review Committee, stated that it appears there is a difference of opinion on the City's finances.

Mayor Lewis asked if the Financial Review Committee will be adopting, or not adopting, this as an affirmative motion.

Ms. Nelson stated that she moved to the Committee that they accept these recommendations and allow her to come to Council with this information. She stated that she is not sure that Council understands what they are looking at when they hear the City has \$30 million in cash. She stated that if the budget is correct, we need to recognize that most of the money tied up in prudent reserves, in trust for others or is otherwise not spendable and that our actual spendable funds are more like \$5 million and we no longer have the large funds to sweep into take care of future projects.

She further stated that you can talk about anomalies but these figures are based on audited financial statements. She said there are specific rules for what constitutes extraordinary items in audited statements, and in ten years there was only one – the sale of Capo Beach park land for \$3.6 million – a number she did not include in her revenue statistics.

Ms. Nelson further stated that the \$55 million was partially created by building up operating surpluses but that now we no longer have that money to sweep into the general fund to pay for future projects. She stated that the “bottom line” is that we have about \$5 million in spendable funds left, that expenditures are meeting up to our revenues and if nothing is done, then we will have to dip into our reserve.

Mayor Lewis thanked Ms. Nelson for her presentation and stated that they are looking forward to hearing from the Financial Review Committee and its approved recommendations in the future.

Council Member Muller asked Ms. Nelson where the City was in 2008 on spendable cash versus where the City is currently in spendable cash.

Ms. Nelson pointed out the response in her report that was given to Council.

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Acting City Manager Killebrew stated that he would like the Council to focus on the General Fund and how much it is producing for on-going costs in order provide our services and if the community and the Council directs the City to do work on Doheny Village, a plan needs to be made to find out how to generate money and to meet our costs. He reported that if the Council continues to look at all funds and do a trend analysis off all funds, it will create issues and not a true picture of the City.

Ms. Nelson continued to provide financial examples in her report and stated that it is a challenge right now and it is not a crisis.

Acting City Manager Killebrew replied to Ms. Nelson's comments and agreed that the City is currently in a challenge and not a crisis right now. He acknowledged that expenses are growing faster than revenue and that we have some work to do. He reported that the challenge he has with the Financial Review Committee is having meaningful financial policies that can help develop a long-term financial plan, and the Committee recommended that the City hire a consultant with the Government Finance Officers of America that has done financial planning for many cities.

Council Member Tomlinson asked Ms. Nelson if this is her view being presented, or the Financial Review Committee's view.

Ms. Nelson, Dana Point, replied that this is her view and that she asked the committee if she could present this to the council, and the vote was deadlocked with one abstention. She stated she thought this was important to bring to Council and had no wish to shame, blame or embarrass anyone.

Mayor Lewis thanked Ms. Nelson for her comments, the Financial Review Committee, and Acting City Manager Killebrew's hard work.

IT WAS MOVED BY MAYOR PRO TEM PAUL N. WYATT, SECONDED BY MAYOR DEBRA LEWIS, THAT THE CITY COUNCIL RECEIVE AND FILE THE FINANCIAL REVIEW COMMITTEE MINUTES OF MARCH 27, 2017.

The motion carried by the following vote:

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

NOES: None

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- B. At the Mayor's request the City Council receive input from any interested Financial Review Committee (FRC) Members on FRC's progress to date.

Mayor Lewis stated that Parts A and B of this Item were sort of done at the same time, but opened Public Comments for Part B of this Item.

Barbara Wilson, Dana Point, thanked Toni Nelson and the Financial Review Committee for working on this and found the information to be "scary". She encouraged Council to listen to the recommendations of the FRC. She asked if Council knew the full picture when they approved the recent median or the police substation.

Mayor Lewis closed Public Comments.

Mayor Lewis stated that in the words of Ms. Nelson and the FRC, this is not a crisis, but it is a challenge and that all the members of the Council, along with the Financial Review Committee and Acting City Manager Killebrew are there to meet that challenge.

Council Member Muller felt that the Council has side-stepped the FRC by having the discussion this evening about the FRC Minutes. He felt that the Council should not have had this discussion because the FRC was not ready to present this to Council, and reminded the Council that there are policies in place and felt that by inviting all members of the FRC to address the Council as a private citizen is a violation of the Brown Act, and asked City Attorney Munoz if this should this be allowed by hearing input from other committee members or other members hearing this discussion at home?

Mayor Lewis clarified that the Planning Commission has the power to make decisions and the FRC does not have the power to make any decisions or policies. The FRC only has the power to advise; therefore, they are different.

City Attorney Munoz stated that this law is ever evolving, and while communication is being shared, it does raise a red flag. He stated there are no cases on this issue and sees that there is an issue that needs to be examined.

Council Member Tomlinson felt that the best solution is to have the committee make a presentation and not as individual members.

Council Member Viczorek agreed with Council Members Tomlinson and Miller. He thanked Ms. Nelson and Mr. Hill for their hard work. He stated that he saw this

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presentation tonight as a failure of the Financial Review Committee and stated that the Minutes already serve as progress of the FRC. He stated that by having this individual make comments it begins to discredit the Committee and suggested the committee to follow policy and come to an agreement, adopt the report, and present it to Council. He stated that the Committee was setup as a watch dog committee and not a policy-making body; conduct the investigation and bring it forward to the Council in an un-biased report to help us make sound fiscal decisions.

Mayor Lewis stated that she completely disagreed with what was just said and that is not a watch dog committee, it was an oversight committee, and its charter was to look at the budgets, all the financial information and is not for the purpose of fraud, waste and abuse. She stated that on the contrary, it is for the purpose for advising this Council on financial information and working with Acting City Manager Killebrew. She stated that the reason they were asked to present (any member could have come) is because this information was included in their minutes, and in order for her to make the decision on whether or not to receive and file their minutes they needed to be here to answer questions. She stated that the meeting was noticed, there was not a Brown Act violation, every member of the Committee was invited to speak, and therefore she completely disagreed with prior comments.

Council Member Muller read the charter of the Financial Review Committee and stated that moving forward, the FRC has a role to the Council and felt that it was a mistake on the Council's part to invite any members of the FRC to address the Council because it side-stepped policy.

Mayor Lewis also read from the FRC charter, stating that the FRC is to provide oversight, clear interpretation of financial information and advice to help Council make good financial decisions.

**15. BUDGET - STATUS UPDATE AND CITY COUNCIL REVIEW**

Acting City Manager Killebrew provided an update.

Mayor Pro Tem Wyatt addressed the City Council with a detailed PowerPoint report (that was distributed to the Council and staff as Agenda Related but not projected on the big screen as a PowerPoint presentation) that he prepared regarding the budget. He requested that a resolution that he would like the Council to direct the staff to answer why the City spends more per capita, and he requested a copy of the budget be provided to all council members and members of the Financial Review Committee.

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Mayor Lewis thanked Mayor Pro Tem Wyatt for all the information he provided and directed him to make a Motion.

A motion made by Mayor Pro Tem Wyatt to have Council direct staff to compare the 2017 budget as a baseline and compare it to the spending of cities of Laguna Woods and Laguna Niguel in some measureable way the amount they spend and why we spend more and what we get for this additional spending in these areas.

Mayor Lewis seconded the Motion.

Council Member Viczorek asked Acting City Manager to comment on how the staff would be able to handle this workload.

Discussion ensued between the Mayor Pro Tem and Acting City Manager to narrow down the work plan in order to achieve a successful report to the City Council based on the information that has been requested.

It was stated by Council Member Tomlinson and Council Member Muller that they both felt that while they appreciated Mayor Pro Tem Wyatt's presentation, they felt that they were not given enough time to read through and comprehend the amount of information presented in his report.

Council Member Muller suggested that this item be brought before the Financial Review Committee and have them make sense of it and report back to the Council of where we spend and why, and if the numbers actually make sense.

Mayor Lewis stated that if we are going to direct the FRC to do this, when are they going to meet to work on it.

City Attorney Munoz replied that there is more than just a scheduling issue here. He suggested that the Council first provide a timeframe of when they would like the data returned to them, followed by the specifics of what information they want the FRC to look at and to provide clear direction of what the FRC would do so as to not create any controversy and provide a clear picture of the Council's expectations.

Mayor Lewis asked Mayor Pro Tem Wyatt if it would be okay with him to request the FRC to do the work.

Mayor Pro Tem Wyatt replied that the end goal is to have enough data in the Councils' hands to get a better understanding of the next budget so if the FRC can do the work, that he would be okay.



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Acting City Manager Killebrew stated that in order to adopt the budget in a timely matter there is concern of what is going to get accomplished from a shotgun approach. He stated that if you drill down the quality and level of service, it will require personal interviews with other members from the City. He further stated that if the expectation of the Council to deliver this information in order to provide a better understanding in order to adopt the budget is it is a lot of work for staff and the FRC and the project will fail.

Mayor Lewis asked Mayor Pro Tem Wyatt if this is what he is asking for: 1 - that data be gathered; 2 - that data is used to identify why Dana Point it is different than surrounding cities.

Mayor Pro Tem Wyatt replied that yes, he wants to know why we spend more money in a given department on what appears to be the same job, and he wants to know why it costs us more to do the work. He stated that he cannot look at our own budget alone, wants a better understanding why we spend the way we do.

Acting City Manager suggested to Mayor Pro Tem Wyatt that they sit down together and look at specific areas and bring it back our resources to target specific areas to look at since there doesn't seem to be an argument that the work needs to get accomplished.

Mayor Pro Tem Wyatt agreed.

Mayor Lewis asked Mayor Pro Tem Wyatt if he is asking for the same data from other cities other than the two, Laguna Niguel and Laguna Hills, in order to compare data.

Mayor Pro Tem Wyatt stated that no he is not, as long as he felt like he had a good comparison.

Acting City Manager suggested that a coastal city be added to the comparison as they would have similar water treatment programs that inland cities would not have these programs and suggested different cities for specific items. Council Member Tomlinson supported that idea.

Mayor Lewis asked if it would help if working with together with Acting City Manager to come up with a working plan to get what he wants to see and bring it back to the Council in order to figure out where to go from there.

Mayor Pro Tem Wyatt agreed.

Council Member Muller provided a substitute motion to direct Mayor Pro Tem Wyatt to work with Acting City Manager Killebrew to form a plan on how to proceed on a metric of what Mayor Pro Tem Wyatt is looking for by the next meeting.

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City Attorney Munoz stated that a motion is not needed and that the direction of the City Council to Mayor Pro Tem and Acting City Manager is clear.

Mayor Lewis stated that she would just like everyone to agree to the direction.

Acting City Manager stated that he sees this as a positive move forward for discussions by the FRC by creating policies that will help create a financial plan.

Council Member Tomlinson agreed with the direction given by Council Member Muller to bring back a plan with metrics and parameters.

Council Member Viczorek also agreed with Council Member Muller's direction given without a motion.

IT WAS DIRECTED BY THE CITY COUNCIL THAT MAYOR PRO TEM WYATT WORK WITH ACTING CITY MANAGER KILLEBREW TO MEET AND CREATE A PLAN WITH METRICS AND PARAMETERS TO BRING BACK TO THE CITY COUNCIL FOR DISCUSSION AT THE NEXT MEETING.

Mayor Pro Tem Wyatt withdrew his initial motion and apologized to Acting City Manager for blind-siding him with his presentation.

Mayor Lewis suggested to Mayor Pro Tem Wyatt to include the Financial Review Committee in this process.

Mayor Pro Tem Wyatt stated that he is unsure of how to do that at this point, but will figure it out with Acting City Manager Killebrew.

Mayor Lewis recessed the meeting at 9:58 p.m.

Mayor Lewis reconvened the meeting at 10:04 p.m.

Mayor Lewis opened Public Comments.

Stephen Wontrobski, Mission Viejo compared Police Services costs between other South Orange County cities and supported the idea of the Financial Review Committee to be included in doing the research.

Buck Hill, Capistrano Beach felt there is not a consensus between City Council members to cut cost in the budget.

Mayor Lewis closed Public Comments.

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Council Member Tomlinson addressed Mr. Hill and asked him not to make personal attacks to people on the Dais by pointing fingers and asked him to observe the decorum of this meeting.

**16. ANNUAL REVIEW OF THE INVESTMENT POLICY**

Acting City Manager Killebrew presented Staff Report.

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY COUNCIL MEMBER RICHARD A. VICZOREK, THAT THE CITY COUNCIL APPROVE THE CITY'S STATEMENT OF SAFEKEEPING AND INVESTMENT OF PUBLIC FUNDS POLICY ("INVESTMENT POLICY").

The motion carried by the following vote:

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

NOES: None

**17. AWARD OF CONTRACT FOR THE 4TH OF JULY AERIAL FIREWORKS  
DISPLAY**

Deputy City Manager Denny provided staff report.

IT WAS MOVED BY MAYOR DEBRA LEWIS, SECONDED BY COUNCIL MEMBER JOHN A. TOMLINSON, RECOMMENDED ACTION: THAT THE CITY COUNCIL AUTHORIZE THE CITY MANAGER TO EXECUTE A CONTRACT WITH PYRO ENGINEERING, INC. FOR THE 2017 DANA POINT JULY 4TH FIREWORKS DISPLAY.

The motion carried by the following vote:

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

NOES: None

**18. RECRUITMENT FOR THE ARTS AND CULTURE COMMISSION**

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City Clerk Ward presented a staff report and stated there are two Arts and Culture Commission positions that will be vacated by Berenika Schmitz and Anthony Small.

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY COUNCIL MEMBER RICHARD A. VICZOREK, THAT THE CITY COUNCIL DIRECT STAFF TO PROCEED WITH THE RECRUITMENT FOR THE ARTS AND CULTURE COMMISSION.

The motion carried by the following vote:

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

NOES: None

**19. AMENDMENT TO AGREEMENT WITH SOUTH COAST WATER DISTRICT FOR THE OPERATION AND MAINTENANCE OF THE SALT CREEK OZONE TREATMENT FACILITY**

Deputy City Manager Denny provided Staff Report.

Council Member Viczorek asked that if the \$4 Million to construct the facility was granted by the State, and clarified if the City does not move forward with granting this extension to the 20 year term then would the city have to refund the money.

Deputy City Manager Denny stated that is correct or the city would have to find someone else to operate it, and that if the city does not approve it, we would have to forfeit the money if we wanted to shut it down.

Council Member Viczorek asked if, after the 20 years, would that condition go away whether we continue to fund it, or if we would have to seek a new grant to build a new plant. He also asked if the City Manager has the authorization to extend the contract every two years without having to come back to City Council.

Deputy City Manager Denny stated that we would have to replace it, and that the City will have to do maintenance every other year, but at some point it will reach the end of its useful life. He further stated that at that point, the Council would have to decide whether or not to rebuild or look at new technology that would be more efficient. In regards to the contract extension, Deputy City Manager Denny clarified that the City Manager would be able to extend the contract, but the City Council will see in the budget the funding for this operation and will have the ability to vote for that funding every year.

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Mayor Pro Tem Wyatt asked if the City owns the facility and in addition to the operating cost, is the City accruing for general maintenance and if it is budgeted.

Deputy City Manager Denny stated that city owns the facility and it is separated separately, so yes it is budgeted.

Mayor Pro Tem Wyatt stated that we would have to look at all the water quality regulations and where it fits in to the longer scheme. Deputy City Manager Denny stated that from the Regional Board's perspective it is preferred that no flow runs through the system; therefore, we may not need the facility in 20 years.

Council Member Viczorek asked that this item be brought back to City Council at the end of the 20 years of the useful life, which would be in 8 years.

IT WAS MOVED BY COUNCIL MEMBER RICHARD A. VICZOREK, SECONDED BY COUNCIL MEMBER JOHN A. TOMLINSON, THAT THE CITY COUNCIL AUTHORIZE THE CITY MANAGER TO PROCESS AND SIGN THE SIXTH AMENDMENT TO THE AGREEMENT WITH SOUTH COAST WATER DISTRICT (SCWD) FOR THE OPERATION AND MAINTENANCE OF THE SALT CREEK OZONE TREATMENT FACILITY AND AUTHORIZE THE CITY MANAGER, WHEN PROCESSING THE AMENDMENT EVERY TWO YEARS, TO ACCEPT ANY NON-SUBSTANTIVE CHANGES UNTIL THE YEAR 2025.

The motion carried by the following vote:

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

NOES: None

**20. DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT/VISIT DANA POINT QUARTERLY REPORT FOR JANUARY – MARCH 2017**

Acting City Manager Killebrew presented staff report.

IT WAS MOVED BY COUNCIL MEMBER JOHN A. TOMLINSON, SECONDED BY MAYOR PRO TEM PAUL N. WYATT, THAT THE CITY COUNCIL RECEIVE AND FILE.

The motion carried by the following vote:

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

NOES: None

**21. SECOND READING AND ADOPTION OF AN ORDINANCE READOPTING PORTIONS OF THE DANA POINT MUNICIPAL CODE AND REAUTHORIZING THE COLLECTION OF A FEE TO SUPPORT PUBLIC, EDUCATION, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION**

Acting City Manager provided a staff report.

IT WAS MOVED BY COUNCIL MEMBER JOSEPH L. MULLER, SECONDED BY COUNCIL MEMBER JOHN A. TOMLINSON, THAT THE CITY COUNCIL HOLD SECOND READING AND ADOPT OF AN **ORDINANCE 17-02** ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, READOPTING SECTION 5.36.020 OF CHAPTER 5.36 OF TITLE 5 OF THE DANA POINT MUNICIPAL CODE ENTITLED "STATE VIDEO FRANCHISE FEES" VIDEO FRANCHISE RELATING TO STATE FRANCHISES FOR CABLE COMMUNICATIONS; AND REAUTHORIZING A FEE TO SUPPORT PUBLIC, EDUCATION, AND GOVERNMENTAL ("PEG") CHANNEL FACILITIES WITHIN THE CITY'S JURISDICTION.*

The motion carried by the following vote:

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

NOES: None

**22. MEETING BETWEEN MAYORS AND CITY MANAGERS OF SAN CLEMENTE, SAN JUAN CAPISTRANO AND DANA POINT**

Acting City Manager Killebrew provided a staff report.

Mayor Lewis opened Public Comments.

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Stephen Wontrobski, Mission Viejo, endorsed the idea to meet with San Clemente and San Juan Capistrano.

Mayor Lewis closed Public Comments.

Council Member Tomlinson stated that there is already a mechanism for which the Mayor can meet on her own with any of the South County cities and feels that another meeting is not necessary.

Mayor Lewis stated that the two cities that are inviting us border our City, and felt that the full intent of the meetings would be to share information and resources on issues that are of a common concern.

Council Member Muller agreed with Council Member Tomlinson and encouraged the Mayor to meet with the Mayors of those cities on her own, and bring issues back to the Council, and asked if this is a Brown Act Committee because if it is, there is costs associated with it and felt that this should not be a structured meeting.

Mayor Lewis stated that at some point it may be, but at this point it is just an invitation to meet on a monthly basis for a one-year trial with the Mayor, City Manager and/or one other Council Member. She further stated that once the invitation to participate is accepted then the structure can be created.

City Attorney Munoz stated that this committee would be subject to the Brown Act because of the way it is appointed by the action of each of the City Councils and comprised of other members of other agencies or from the public, then the Brown Act comes into play.

Mayor Lewis felt that a vote needs to be made to accept the invitation, and cannot see any reason to not meet with the neighboring cities and try to resolve issues.

Council Member Muller stated that the Mayor is welcome to go talk to them and establish a definition and bring it back to the City Council so that it can be decided if and what is important to our city.

IT WAS MOVED BY MAYOR PRO TEM PAUL N. WYATT, SECONDED BY MAYOR DEBRA LEWIS, THAT THE CITY COUNCIL CONSIDER THE CITY OF SAN CLEMENTE'S INVITATION TO FORM A TRI-CITY COMMITTEE OF THE CITIES OF DANA POINT, SAN CLEMENTE AND SAN JUAN CAPISTRANO TO MEET REGULARLY TO DISCUSS ISSUES OF MUTUAL CONCERN AND SELECT THE MAYOR AND ONE MEMBER OF THE CITY COUNCIL TO BE THE DANA POINT REPRESENTATIVES TO THE TRI-CITY COMMITTEE.

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The motion failed by the following vote:

AYES: Mayor Pro Tem Paul N. Wyatt and Mayor Debra Lewis

NOES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, and  
Council Member Richard A. Viczorek

## **STAFF REPORTS**

City Attorney Munoz did not have any Staff Report.

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

Mayor Lewis commented that she agreed with Council Member Tomlinson that it is out of place to attack people and apologized that it happened. She stated that she would be more vigilant if someone does that and if that person continues to do it, they will lose their right to speak here.

Council Member Muller reported the Governor is creating a trailer bill against individual cities regarding issues on medical Marijuana and reported that this issue is something that we need to keep a close eye on. He suggested strategic planning meetings amongst the members of City Council to get our priorities in order.

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

Acting City Manager Killebrew suggested that the City Council update the City's Strategic Plan since some of them are outdated.

City Attorney Munoz added that this is usually done by holding a special meeting/workshop and is less formal than a typical Council meeting.

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

Council Member Tomlinson congratulated the City on a successful Easter Egg Hunt at Pines Park. He also congratulated Chief Chilton on achieving high quality marks from his fellow deputies and officers.

Council Member Viczorek added his notes of congratulations to Chief Chilton and stated that he would turn in his list of meetings attended to the City Clerk.



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

**ADJOURNMENT**

There being no further business before the City Council at this session, Mayor Lewis adjourned the meeting at 10:45 p.m. and announced that the next Regular Meeting of the City Council will be May 2, 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 MAY 2, 2017.

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Meetings attended since March 21, 2017:

**Mayor Lewis**

|          |   |
|----------|---|
| March 22 | Andy Brunhart – South Coast Water District  |
| March 22 | Lisa Bartlett – SC Contract Cities Working Group  |
| March 23 | OC Sheriff Advisory Council Medal of Valor Luncheon   |
| March 23 | Various DP residents – Mayor’s Office Hours   |
| March 24 | Ocean Institute Jazz Festival Reception   |
| March 25 | Mayor Ferguson, Mayor Ward, Sheriff Hutchins, Supervisor Bartlett, San Juan Capistrano City Council – San Juan Capistrano Swallows Parade |
| March 31 | Tony Rackaucus – OC District Attorney   |
| April 14 | Dr. Willson – Parking Briefing  |
| April 15 | Sea Canyon Park Easter Egg Hunt   |
| April 19 | Various DP residents – Mayor’s Office Hours   |

**Mayor Pro Tem Paul N. Wyatt**

|          |  |
|----------|--|
| March 22 | Orange County Police Services                        |
| March 23 | 29 <sup>th</sup> Annual OCSD Medal of Valor Luncheon |
| March 24 | UCI Public Policy Making Academy                     |
| March 27 | Lori Zeller – OC Fire Authority                      |
| March 28 | Headlands Mediation                                  |
| April 3  | Sanford Edwards                                      |
| April 10 | Ocean Institute & Surfrider Foundation               |
| April 10 | South OC Economic PAC                                |
| April 12 | Dr. Richard Willson                                  |
| April 13 | Orange County Library                                |

**Council Member Richard A. Viczorek**

|          |                                   |
|----------|-----------------------------------|
| March 23 | OCSD Medal of Valor Luncheon      |
| April 12 | Meeting with parking expert       |
| April 13 | SJHTCA Board of Directors meeting |

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**Council Member Joseph L. Muller**

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| March 22 | TCA                                    |
| March 23 | OCFA                                   |
| March 23 | O.C. Sheriff's Medal of Valor Luncheon |
| March 28 | LVA                                    |
| March 31 | League of Cities                       |
| April 4  | TCA                                    |
| April 12 | OCFA                                   |
| April 12 | Capo Cares                             |
| April 12 | Parking Study                          |
| April 13 | TCA                                    |

**Council Member John A. Tomlinson**

|          |  |
|----------|--|
| March 23 | O.C. Sheriff's Medal of Valor Luncheon |
| April 14 | Parking Briefing                       |
| April 15 | Easter Egg Hunt                        |

