

**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL ADJOURNED REGULAR MEETING MINUTES  
JANUARY 30, 2007**

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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 Harkey at 5:00 p.m. in the Dana Point City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point.

**ROLL CALL**

PRESENT: Diane L. Harkey, Mayor  
Lisa A. Bartlett, Mayor Pro Tem  
Lara Anderson, Council Member  
Joel Bishop, Council Member  
Steven Weinberg, Council Member

STAFF PRESENT: Douglas Chotkevys, City Manager; Patrick Muñoz, City Attorney; Sharie Apodaca, Director of Administrative Services; Kathy Ward, City Clerk; Kyle Butterwick, Director of Community Development; Brad Fowler, Director of Public Works/City Engineer; Lt. Mark Levy, Chief of Police; and Jackie Littler, Executive Secretary.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Council Member Bishop.

**INVOCATION**

The Invocation was led by Robert Moore.

**PUBLIC COMMENTS**

Mayor Harkey opened the meeting and indicated that this meeting is intended to be an information workshop. It will not be televised, no decisions will be made and direction will be given to staff on these two topics.

Mayor Harkey opened the meeting for Public Comments.

Tom Barnes, San Clemente, a property owner in Dana Point, spoke against the three minute limitation for Public Comments and asked Council to consider a longer time limit.

**NEW BUSINESS**

**1. CITY PROPERTY - POTENTIAL USES FOR VIA CAÑON**

City Manager Chotkevys provided a staff report and history on the potential uses for Via Cañon.

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Mayor Harkey opened this item for Public Comments.

Robin Hall, Capistrano Beach, spoke in favor of keeping Via Cañon as park land. She would like this property to stay as open space and is opposed to high density development. She recommends turning this property into a native park and incorporate an art park and include sculptures.

Gary Clark, Capistrano Beach, has lived in Capistrano Beach for 30 years. He supports this property developed into a park rather than high density development.

Carol Wilson, Capistrano Beach, supports a natural environment park that you could walk up to because of the difficult access for cars and parking.

Mayor Pro Tem Bartlett said that the comments she has received from Capistrano Beach residents were in favor of keeping Via Cañon as open space, perhaps a park or dog park, nature trail or passive park. This park has geotechnical and parking issues that need to be addressed and feels that additional information and geotechnical testing is needed before proceeding further.

Council Member Anderson felt that we should not have any kind of dense project; the access is very bad. Pedestrian access would be limited because of the steep road. She would like to know how much it would cost to make the geotechnical issues safe and the land usable. If it would be expensive to fix, we could think about selling off part of it to finance the other part of it and create a natural public park. She would like to fulfill the community's needs that we have (affordable senior housing, etc.) as well as make this land compatible with the neighborhood.

Council Member Weinberg would like to entertain leasing this property to someone who wants to build a Senior Center, affordable senior housing, and also build a park that can be used by the City.

Council Member Bishop stated that we need to find out what the geotechnical cost would be and we need to see if there is any way to have vehicular access. He feels it would be easy to build a parking lot to hold 20 cars and still have a lot of land left up there.

Mayor Harkey stated she is very familiar with this property, having lived in Capistrano Beach for 20 years. The Capistrano Bay Park and Recreation District had always intended for this property to be park land. Mayor Harkey provided her comments with regard to Via Cañon as follows:

1. Lot was purchased in conjunction with 2 other parcels, that are now parks.
  - a. Capistrano Bay Parks & Recreation did not zone RD14; the City did after incorporation.
  - b. City acquired CBPR and zoning was never changed.

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2. Mayor Harkey was at the 2005 Council meeting where we approved the update to the Parks, Recreation and Open Space Plan. She doesn't recall that we determined that Via Canon was not appropriate for park uses and that it should be liquidated. She recalled that Lara was silent on the issue and that Wayne and Russ wanted to explore the question of selling Via Cañon. The only firm proponent was Jim Lacy.
  - a. Geological issues remain but they are mostly a problem if the park is active rather than passive.
  - b. There is limited access due to steep topography because we were exploring soccer fields, skateboard park, etc. which require a lot of parking space and foot access.
  - c. Security issues remain just as they do in Pines Park which is recessed and has areas which are not visible from the street.
  - d. Grading cost will depend on the uses. Fully sloping grading reduced lot size in half?
3. In 1997, the City's Securities Commission recommended the sale, trade, or liquidation or other publicly beneficial disposal of Via Cañon and La Cresta properties
  - a. Who or what was this?
  - b. Funds generated from Via Cañon and La Cresta properties were to be utilized predominantly within the service area of the respective parcels.
    1. She doesn't know of any other parcel in the "neighborhood" or in the city that would be a more appropriate site for a park – where is there land availability with ocean and canyon views that we could afford to buy or that even exists.
    2. The City already owns it – it's paid for.
4. General Rule – don't interfere or increase traffic, noise or other nuisances in already established neighborhoods.
  - a. People move to an area because they assumedly like it and government should not interfere.
  - b. Potential for Passive uses
    1. Dog run
    2. Pathways
    3. Benches
    4. Slope stabilization with grading and plants
      - i. Re-vegetation and the use of erosion control fabric to assist in the stabilization of the slopes are important future steps in reducing potential erosion problems.
    5. On-site parking 15 – 20 spaces
5. Use funds in Reserve for Open Space -- \$1,440,000
  - a. Return to Council with estimate of costs and improvements with CIP Budget deliberations.

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6. If this Council desires to dispose of the property, Mayor Harkey recommends Government Code 37420 and 37430 to allow for public debate.
  - a. A final issue to consider relates to the nature of the financing utilized to purchase the property. The Certificates of Participation ("COP's") that were utilized to purchase the property are a type of bond financing. If the COP's were issued for the specific purpose of acquiring the property as a park, the City may be required to hold an election prior to the disposition of the property. (Government Code § 38502.) Additionally, if the property was purchased to be a park, even though never used that way, it is possible that the procedures set forth in the Municipal Park Abandonment Law of 1939 may apply. Due to the significant amount of time that would be involved, we have not yet obtained and reviewed the applicable financing documents. Should the Council give direction to staff to evaluate a possible sale of the property, significant due diligence relating to this issue would have to occur.
  - b. 4/5 vote of Council

Council Member Anderson asked that one of the options that staff to explore include a "do nothing" approach. How badly is the property eroding right now? If we did nothing, five years from now what's going to be there? How bad is it eroding? What do we need to do to save the land?

City Manager Chotkevys suggested that we first do a comprehensive geotechnical study to identify options based upon the condition of the dirt and beneath. Once we have that we can study the "do nothing" option and pursue other passive options that the Council can explore as we come forward with the budget process. The real driving factor here is the underlying geology, and then staff can come back with some options for Council consideration.

## **2. SHORT TERM RENTAL PROPERTY**

City Manager Chotkevys provided a staff report on short term rentals. He indicated that since August 2006, the City's Code Enforcement Department has received 12 pieces of correspondence in the form of letters, emails, flyers and faxes, as well as 17 telephone calls, all in opposition to short vacation rentals. Our Zoning Code does not permit the use of short term rentals. He has received communications from residents in Niguel Beach Terrace about a consideration that their Board was going to do about modifying their CC&R's regarding short term vacation rentals. After receiving input from the City Attorney and the Director of Community Development, he advised them they are not a permitted use in residential zones as they are defined as hotels. Options were also explored where they are lawfully permitted in other cities. Staff would like to work with the Council and present some options to get direction so we can come back with something that, if the Council so chooses, allows for the existence of vacation rentals, but also provides an element of regulation so that if we do have any renegade

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vacation rentals we can step in and effectively regulate that in response to concerns of neighbors who are having an adverse impact.

Staff has examined the City of Newport Beach and if the Council so chooses to permit short term vacation rentals, staff would return with something similar to Newport Beach that creates a structure that they're permitted so we can include requirements for insurance, the ability to contact the owner, being able to correct bad behavior when it exists. It also allows the collection of Transient Occupancy Taxes.

Mayor Harkey opened this item for Public Comments.

Susie Hopson, Dana Point, owns several Niguel Beach Terrace condos and rents them out as short term rentals after having a lot of difficulty with long term renters. During the last four years of short term rentals, she has never had a neighbor call her with a complaint.

Bill Everett, Dana Point, President of the Board of Niguel Beach Terrace, stated that vacation rentals are against the rules of the CC&R's. The Board had changed definitions to go along with Dana Point's definitions. He stated the typical short term renter in Dana Point is a family of four to five, from out of state or out of country, arriving by airplane, rents an automobile, eats out, and are up and out early to enjoy our beaches and facilities in our area. He stated that they get complaints about renters filling up the trash bins and taking all the parking spaces. He stated that 66% of Niguel Beach Terrace residents are long term renters; 26% are owner occupied; and 8% are vacation rentals. The complaints don't fit the profile.

Brian Giancesin, Dana Point, Board Member of Niguel Beach Terrace, stated the vast majority of their complaints were basically without foundation and based upon mere conjecture or theory. He stated that 90% of complaints to the Board are regarding long term rentals rather than short term rentals. He feels that vacation rentals are a benefit to this community.

Council Member Anderson asked if there CC&R's don't allow for short term rentals. Mr. Giancesin responded that from an attorney's point of view, he feels that there is an argument to be made on both sides – they don't either prohibit or allow it.

Council Member Anderson asked if there's been any enforcement on short term rentals. Mr. Giancesin responded that they have been renting there for over 20 years and there's no ability for them to enforce; the City has allowed it there and to all of a sudden take an action that would prohibit that may bring on lawsuits and liability.

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Michael Sautner, San Juan Capistrano, owns a vacation rental in Niguel Beach Terrace, also owns standard rentals and what has been said is true. Taxing would mean losing summer rentals because people won't want to go to the Board of Equalization to go through the necessary taxation basis. He recommends tabling the whole issue and give it some thought. It would be too costly to regulate.

Council Member Bishop stated that he didn't think anyone is disparaging the short term renters and encouraged the remaining speakers to bring up different aspects or points.

Beth Everett, Dana Point, stated \$12,000 per year is being spent to advertise for short term vacation rentals in their condos. One week staying in Dana Point would bring \$450,000 to the City at the weekly rental rate of \$3,000.

John Wyson, Dana Point, indicated his interest in converting his Niguel Beach Terrace property into a short term vacation rental.

Jack Lanier, Dana Point, Niguel Beach Terrace Board Member, commented on the small number of complaints received regarding short term vacation rentals. He doesn't feel that these rentals are in competition with local hotels and that the coastal community favored such rentals.

Robin Milonakis, Dana Point, stated she had moved from Newport Beach because of vacation rental issues and had relocated to Dana Point to live without such rentals.

Vonne M. Barnes, San Clemente, owner of a vacation rental in Niguel Beach Terrace, noted that the LCP was approved for mixed usage in 1982 and suggested staff look into the legalities of zoning for these properties.

Michael Peters, Dana Point, has resided in Niguel Beach Terrace for 13 years and bought his unit as a second home and long-term rental. Mr. Peters requested the Council make their decision based upon everyone's housing.

Gary Epstein, Dana Point, stated he has lived next to a short term rental unit for 13 years and prefers short term renters to long term renters. Mr. Epstein is considering short term rental use of his property in the future.

Tom Barnes, San Clemente, spoke of the improved conditions at Niguel Beach Terrace over the last few years.

Gene Leff, Dana Point, spoke of the need for long term residents and neighbors and mentioned security problems as a result of short term renters.

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Ken Ross, Mission Viejo, owner of Capistrano Realty, stated he frequently coordinates short term rentals with minimal problems. As these rentals cater to a different clientele, he does not feel they compete with local hotels and imposing TOT on them would be too cumbersome.

Jim Johnson, Dana Point, spoke in opposition to short term rentals due to the close proximity of the homes. As the owner of an out-of-state short term rental, Mr. Johnson spoke of that state's strict regulations requiring local property management.

Chris Koerne, Dana Point, owner of a short term rental, stated short term rentals pose fewer problems than long term rentals and spoke in support of approving short term vacation rentals.

Susan Whittaker, Dana Point, spoke in opposition to short term rentals as she sees it as running a business out of one's home. Ms. Whittaker commented on the lack of background checks on short term renters.

Scott Peterson, Laguna Niguel, owner of a Niguel Beach Terrace short term vacation rental, explained his belief that they are beneficial as they enable him to afford upgrades to his units due to competitive rental rates.

Carol Wilson, Dana Point, spoke of the need for regulation of short term rentals and commented on their impact on local quality of life.

John Murphy, Dana Point, requested the City's opposition to short term vacation rentals due to problems he has seen with them.

Jan Cocchiara, Dana Point, spoke in support of short term vacation rentals, which he prefers over long term rentals.

William Petersen, Dana Point, owner of a Niguel Beach Terrace condo which has been a short term rental for the past nine years, stated he would support TOT if it was easy to participate in.

Council Member Bishop stated that there's been pickup trucks pulling trailers with sand buggies that take up the parking lot for a week or two in Niguel Beach Terrace. He's concerned about the unintended impact on the residents living there full time. Standard homeowner insurance excludes seasonal renters unless there is a specific rider on the policy and would like this investigated in regards to possible impact on full time residents if someone sues the Homeowner Association.

Council Member Bishop stated that the City has identified 43 units in Niguel Beach Terrace that are vacation rentals. He would like a consistent policy to handle issues that provides the full time residents avenues for addressing issues.

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Council Member Weinberg asked the City Attorney about the Coastal Overlay Zone and asked if it was true that the Coastal Commission basically says that west of PCH and 101, vacation rentals are allowed by their statute.

City Attorney Muñoz responded saying that as a general coastal policy, the Coastal Commission does encourage land uses that enable people to have access. Low cost hotels is something very important to the Coastal Commission. As a case in point, our Headlands project the Coastal Commission came up with a good idea that we should have a youth hostel type of use as part of the Headlands and that was a direct result of their policies that encourage uses that enable people to have access to the beach. Understand however, that the City has not given up its land use authority and the Coastal Commission does not have land use authority in the City. The way it works, the City has to have a Local Coastal Program comprised of any land use regulation that you have in the coastal zone. Once the City adopts its land use regulations, they must be approved or certified by the Coastal Commission, who will look at the proposal and make suggestions for modifications if it doesn't like it. As it relates to the vast majority of the City of Dana Point, in 1996 and 1993 collectively, two local coastal programs were approved – one for the Capistrano Beach area and one for the Monarch Beach area. Prior to that time, the County had zoning ordinances and general plan designations that applied to the entire City that were in place. As it relates to the center part of the City, we generally refer to as the Dana Point Specific Plan area, which is the Harbor and the Town Center area, the City's local coastal program has never been approved or certified by the Coastal Commission and with all of the various projects the City's been dealing with the last couple of years for the Harbor and Town Center there really isn't a reason to put forward the original plan that had been put together when the City had incorporated for that area, which means that the County's rules are effectively still in place. There is an approved zoning ordinance for the primary area of discussion tonight, Niguel Beach Terrace, that has been adopted and certified by the Coastal Commission allowing for various residential uses. We have options that we can pursue to accomplish whatever goals you may have – through zoning ordinance amendments (which would potentially require going through the Coastal Commission) or use the existing zoning and come up with more business-type regulations that wouldn't have to go through the Coastal Commission.

Council Member Weinberg asked City Attorney Muñoz to elaborate on the County's rules. City Attorney Muñoz stated there are areas in the central portion of the City, which is referred to generally as the Dana Point Specific Plan area, where the City's own local coastal program has never been approved by the Coastal Commission. The City has land use regulatory authority in those areas. It has adopted its own zoning. The City's zoning does apply to the extent that it has not increased uses that were permitted by the County to the degree that it has left the uses the same or decreased uses that were permitted by the County, Coastal Commission approval was not necessary. So the City's zoning applies in those areas. We identified about four properties where the City's zoning expands upon uses. The expanded upon uses need Coastal Commission approval before they are technically effective.

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Mayor Harkey asked if our approved zoning ordinance is fine to make sure we're not going to get sued or have a problem with the Coastal Commission. City Attorney Muñoz responded that our approved zoning ordinance is fine.

City Attorney Muñoz clarified that our current zoning ordinance, as a general rule, prohibits short term vacation rentals. There is an exception in our existing rule that's a vague statement that if the Council wanted to expand upon could adopt regulations to allow short term rentals and come up with a permit process similar to the Newport Beach model...it wouldn't be identical. It would not require a zone change, it would simply take the ambiguous language, clarify it, define it and say what we mean by this language is that you can rent for short term purposes as long as you follow these rules. A second way we could accomplish this would be to adopt a zoning change that simply says that in various designated areas short term rentals are approved, either just permitted or conditionally permitted pursuant to some sort of a permit process, again maybe similar to Newport Beach concept or some of the other cities' concepts. That would require a Coastal Commission approval.

Council Member Anderson referred to an ordinance limiting timeshares to certain areas and asked staff what is the difference between a short term rental and a timeshare when they're basically condo units, other than a short term rental may only have one owner although in some cases it could be a partnership owning it, versus a timeshare?

City Manager Chotkevys responded saying timeshare ownership is typically where you buy into a product and you can move it around from area to area. We have timeshares down in Capo Beach on Coast Highway. Fractional ownership in the literal sense, and I believe what the Council had approved at the time was actual – you would take a house and slice up the title to that house four ways and have four owners and each one would have a period of time when they would call that "home" or rent it out. But they would have fee title ownership in that property, unlike the fractional. At that time, the Council passed an ordinance basically the Coastal Commission returned it to the City for further consideration. The Council never essentially took action on that, so essentially there was no force behind it.

City Attorney Muñoz stated the ordinance that the Council approved, although it's not on the books at this point, basically approved the ability for multiple people to own a single unit. It did not approve renting of those units to other people. Multiple people can all own a unit together and each person will have an ownership interest. That's different than what we're talking about which is rentals.

Council Member Anderson stated when we were talking about fractional ordinances there was talk about limiting it to certain areas, and she felt that the short term rentals similarly are congregating in specific areas like Beach Road, like Beach Niguel Terrace. Now we're talking citywide and that's not to say that there aren't short term rentals going on citywide, but they seem to be concentrated in these two areas. She asked if it would be possible to limit, have "tourist districts," and limit these to a certain area while protecting the rest of the City. City Attorney Muñoz responded that it was possible, and Council

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Member Anderson asked that this should be considered and investigated by staff. City Attorney Muñoz clarified that a zoning ordinance must be adopted in order to do it that way.

Council Member Anderson stated that this is a citywide issue. This is a complex issue and we have laws; if laws aren't being enforced we either need to start enforcing law or change the law. She asked staff to look into a few items:

- 1) If there's any real estate disclosures, like if someone is looking at purchasing a condo or a home if there's any disclosure that needs to say this is being as a business base because of the vacation entity;
- 2) Collection of Transient Occupancy Taxes (T.O.T.), what would the cost be to enforce?
- 3) The Home Owner Association's CC&Rs, they are not being enforced, and don't they override what the City would need to do? It's confusing if the HOA is saying it's not allowed, how was this going on and they're not enforcing it either? Maybe their rules need to be changed too.
- 4) If we start to go down the road of permits, can there be options to revoke? What is the recourse for complaints? What kind of zone am I in, what kind of neighborhood am I buying into? She stated that is very important, and something we owe all our residents is a very clear definition of what they're getting into.

Mayor Harkey asked staff to investigate the cost of enforcement of a T.O.T. and how do we go about doing this. Mayor Harkey has concerns over the timeshare issue and wants to be sure this isn't a backdoor into that. She is also concerned about the new units in Town Center and is concerned that these units becoming all short term rentals rather than residents, which is what the City had envisioned. Mayor Harkey asked if we could limit the number of units [in a development that could be short-term rental]. She wants to be sure if the City implements any policy at all, we can implement it citywide. She indicated that Beach Road residents are very much in favor of a T.O.T. or anything we need to do. They like their short term rentals, but they want them monitored as well. Mayor Harkey also asked staff what are the HOA's responsibilities vs. what are the City's responsibilities. The tenants are only as good as the landlords in any place and that's the bottom line. She also asked what kind of code enforcement we could actually do. It was stated that the HOA rules would supersede anything that we did, so an HOA could in fact disallow these. She supported Council Member Anderson's option to revoke the permits, that any type of short term rental disclosure should come from the HOA. Mayor Harkey believes that when you sell real estate, you are obligated to disclose absolutely everything.

Council Member Anderson asked staff to look into disclosure for the non-HOA areas in Dana Point as well.

City Attorney Muñoz stated that we could require someone who has a permit to record a note on their property that they have a permit like that. That would enable someone coming in to buy a neighboring property, who was just doing above and beyond normal due diligence, you would find out whether that's occurring. If the real estate market knew that we were requiring that, it would become a common practice for a simple title search

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for adjoining properties if you were a new buyer. You would effectively get a disclosure through that kind of system.

Mayor Harkey recalled that Council Member Bishop talked about insurance riders, liability of the HOA for any accidents on the premises or liability to an HOA or to surrounding homeowners. She asked if you have an HOA, what the liability is. She feels if we're going to have a law, we need to enforce it. If it's not being enforced, we probably need to change it but she doesn't want to impact surrounding neighborhoods. Mayor Harkey likes something similar to Newport Beach's ordinance.

City Manager Chotkevys stated that based upon the comments provided by the Council, staff will take a look at that and Newport Beach and some of these other cities, get the direction and comments by the Council Members and then start formulating something that we think addresses everyone's concerns and then; if the Council so chooses, we'll bring that back for future consideration.

Mayor Pro Tem Bartlett verified that the timeshares also pay T.O.T.

Council Member Anderson asked what would happen if we said no short term rentals? How would we go about that (like Huntington Beach) and what would the recourse be?

Council Member Weinberg feels that we should keep it simple, try to do the bare minimum; so it works, it functions, and it does not become a burden to the citizens, the renters, or the people that rent.

Mayor Harkey agreed with Council Member Weinberg, but is afraid of instituting a policy that's not workable and/or that costs staff a lot of money to implement. She liked City Manager Chotkevys's suggestion to send it back to staff to review and come up with something that we can either accept or reject and we can decide at that point to take no action, take action, or alter it.

Council Member Bishop suggested that we could use the resources that we have with some interested residents.

City Manager Chotkevys suggested that if anyone in the community would like to share information, they could meet with him, Council Member Bishop and Kyle to receive that information and factor it into the equation.

**PUBLIC COMMENTS (Continued)**

There were no additional Public Comments.

**ADJOURNMENT**

There being no further business before the City Council at this session, Mayor Harkey declared the meeting adjourned at 7:16 p.m.

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The next Adjourned Regular Meeting of the City Council will be February 6, 2006 at 5:00 p.m. in the Dana Point Community Center located at 34052 Del Obispo, Dana Point, California.

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KATHY M. WARD  
CITY CLERK

APPROVED AT THE MEETING OF FEBRUARY 20, 2007