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**CITY OF DANA POINT, CALIFORNIA  
CITY COUNCIL REGULAR MEETING MINUTES  
SEPTEMBER 14, 2005**

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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 Rayfield at 5:02 p.m. in the Dana Point City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point.

**ROLL CALL**

PRESENT: Wayne Rayfield, Mayor  
Lara Anderson, Mayor Pro Tem  
Russell Chilton, Council Member  
Diane L. Harkey, Council Member  
James V. Lacy, Council Member

STAFF PRESENT: Sharie Apodaca, Director of Administrative Services; Patrick Muñoz, City Attorney;; Elizabeth Ehrling, City Clerk; Cathy Catlett, Assistant City Clerk; Kyle Butterwick, Director of Community Development; John Tilton, City Architect/Planning Manager; Brad Fowler, Director of Public Works/City Engineer; Matt Sinacori, City Engineer; Mark Billings, Chief of Police; Mike Rose, Emergency and Support Services Manager; Brenda Chase, Senior Planner; Kathy Ward, Executive Secretary; Jennifer Anderson, Management Analyst

**CLOSED SESSION**

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

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Government Code § 54956.9 (b1), (3 cases)
- B. CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION, Government Code § 54956.9 (c), (1 case)
- C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION, Government Code § 54956.9 (a), (2 cases)
  - 1. Name of Case: Diedrich Coffee, Inc. v. City of Dana Point, et al, Orange County Superior Court Case No. 05CC03529
  - 2. Name of Case: Brongo Construction v. City of Dana Point, Orange County Superior Court Case No. 04CC10068

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Mayor Rayfield recessed the meeting into a Closed Session at 5:04 p.m. pursuant to Government Code Section 54956 et. seq.

**RECONVENE CITY COUNCIL MEETING**

Mayor Rayfield reconvened the meeting at 6:01 p.m. All Council Members were present.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Trish Minty of the Mariner Sea Scouts.

**INVOCATION**

The Invocation was led by Pastor Dave Keen of South Shores Church. Pastor Keen spoke of his recent Missionary trip to South Africa.

**CLOSED SESSION ANNOUNCEMENT**

City Attorney Muñoz reported a settlement has been reached in the matter of Closed Session Item C, Diedrich Coffee, Inc. v. City of Dana Point, et al, Orange County Superior Court Case No. 05CC03529 which was now in effect. The Court has determined that Deidrich is able to retain the drive-through which had been previously operated at that location, as well as ruling against Deidrich on its damage allegations, determining they were not entitled to sue the City of Dana Point for damages. Deidrich has voluntarily dismissed its allegations against Mr. Chilton and has issued an official statement of regret relating to Mr. Chilton which reads as follows "Deidrich's lawsuit against the City included City Council Member Russell Chilton based on information Deidrich received from third parties. After extensive discovery and thorough investigation, Deidrich has determined that there is insufficient evidence to pursue any litigation against Mr. Chilton personally. Deidrich regrets Mr. Chilton was a necessary party to the litigation." The Deidrich litigation has been successfully concluded, Mr. Chilton has been exonerated, and the City has a written agreement with Deidrich's that they are allowed to operate the drive-through only exactly as it has always been operated, with documentation to verify that. Any changes to the drive-through will require a Conditional Use Permit from the City.

Council Member Chilton stated that "sometimes as an elected official you have to go through a very painful process. Being named in this litigation was not pleasant for my family or myself, but you only need to look as far as the third parties referred to in the litigation brought forward by Mr. Bill Ossenmacher and Greg Powers. Throughout the course of this litigation when people came up and asked me what was going on, I only got so far as to say 'Bill Ossenmacher' and eyes would roll and they'd shake their head and that would be the end of it. It's an unfortunate situation, but nonetheless it's unfortunate that Dietrich's was introduced to this community by Bill Ossenmacher, because had that not happened I think their experience would have been a lot different. Having said that, we need to move on, we need to welcome Dietrich's into our community and put this thing to bed."

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Mayor Rayfield stated "not only was Councilman Chilton wrongly accused in this suit, but so was the City of Dana Point. I am delighted that Councilman Chilton was exonerated and I feel that the City and the City staff have also been exonerated. We are glad to have that behind us and go forward."

**PRESENTATIONS AND PROCLAMATIONS**

Certificate of Recognition – Jim Wehan, Tall Ship Captain

Mayor Rayfield introduced Jim Wehan, Tall Ship Captain of the Pilgrim and the Spirit of Dana Point, and presented him with a Certificate of Recognition recognizing him for his contributions to the community and congratulating him on being named Captain of the two tall ships.

Business of the Month - Mirabeau French Bistro

Director of Administrative Services Apodaca gave a power point presentation of Mirabeau French Bistro. Mayor Rayfield introduced co-owners David Pratt and Katherine (Katie) Averill and presented them with a Certificate of Recognition.

Certificate of Recognition – City Motto Contest Winner

Mayor Rayfield introduced City Motto Contest winner David Kokx and his wife Joyce, and presented David with a City Seal Tile Plaque in recognition of his submitting the selected City Motto "Harboring the Good Life."

**CONSENT CALENDAR**

Council Member Harkey removed Item 12 from the Consent Calendar.

IT WAS MOVED BY MAYOR PRO TEM ANDERSON, SECONDED BY COUNCIL MEMBER HARKEY, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS LISTED ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEM 12.

The motion carried by the following vote:

AYES:	Council Members Chilton, Harkey, Lacy, Mayor Pro Tem Anderson and Mayor Rayfield
NOES:	None
ABSENT:	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. SPECIAL MEETING MINUTES, JULY 18, 2005**

APPROVED THE MINUTES.

**3. REGULAR MEETING MINUTES, AUGUST 24, 2005**

APPROVED THE MINUTES.

**4. SPECIAL MEETING MINUTES, SEPTEMBER 6, 2005**

APPROVED THE MINUTES.

**5. PLANNING COMMISSION MEETING MINUTES, MEETING OF AUGUST 17, 2005**

RECEIVED AND FILED.

**6. PLANNING COMMISSION ACTIONS, MEETING OF SEPTEMBER 7, 2005**

RECEIVED AND FILED.

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

RECEIVED AND FILED.

**8. CLAIMS AND DEMANDS**

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

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9. **SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING SECTION 12.08.020 OF THE DANA POINT MUNICIPAL CODE TO ADDRESS A NUMERICAL INCONSISTENCY REGARDING STORAGE OF VEHICLES IN PUBLIC STREETS AND PUBLICLY OWNED PROPERTY, AND SECTION 12.08.028 REGARDING PARKING RESTRICTIONS ON NARROW STREETS** *[STRATEGIC PLAN: MAINTAIN, MODERNIZE AND BEAUTIFY THE CITY'S INFRASTRUCTURE AND NEIGHBORHOODS]*

ADOPTED **ORDINANCE NO. 05-05**, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING SECTIONS 12.08.020 AND 12.08.028 OF THE DANA POINT MUNICIPAL CODE.

10. **ADOPTION OF RESOLUTION FOR THE CITY OF DANA POINT'S FEDERAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR THE PERIOD OF OCTOBER 2005 TO SEPTEMBER 2006** *[STRATEGIC PLAN: ACHIEVE TOTAL EXCELLENCE IN MUNICIPAL SERVICES AND CITY ADMINISTRATION/PLANNING WITH EXCELLENT CUSTOMER SERVICE AND COST-EFFECTIVENESS]*

(1) ADOPTED **RESOLUTION NO. 05-09-14-01**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ADOPTING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) ANNUAL PROGRAM FOR THE PERIOD OF OCTOBER 2005 TO SEPTEMBER 2006; AND (2) AUTHORIZED THE CITY MANAGER TO EXECUTE THE DOCUMENT.

11. **ADOPT A RESOLUTION OF THE CITY OF DANA POINT CITY COUNCIL FOR THE APPROPRIATION OF FUNDING UNDER THE STRUCTURAL FIRE FUND ENHANCEMENT FUND PROGRAM** *[STRATEGIC PLAN: MAINTAIN, MODERNIZE AND BEAUTIFY THE CITY'S INFRASTRUCTURE AND NEIGHBORHOODS]*

(1) ADOPTED **RESOLUTION NO. 05-09-14-02**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, FOR THE APPROPRIATION OF FUNDING UNDER THE STRUCTURAL FIRE FUND ENHANCEMENT FUND PROGRAM (FUND 171); (2) DIRECTED STAFF TO SECURE REIMBURSEMENT OF FUNDS, PLUS ANY SHORT TERM INTEREST UNDER THE STRUCTURAL FIRE FUND ENHANCEMENT FUND PROGRAM FOR THE INSTALLATION OF BATTERY BACK-UP SYSTEMS CITYWIDE AS PART OF THE TRAFFIC SIGNAL IMPROVEMENTS AT VARIOUS INTERSECTIONS PROJECT, CIP NUMBER 1183; AND (3) TRANSFERRED FUNDS FROM THE TRAFFIC SIGNAL IMPROVEMENTS AT VARIOUS INTERSECTIONS PROJECT, CIP PROJECT NUMBER 1183, TO THE ANNUAL TRAFFIC SAFETY IMPROVEMENT PROGRAM PROJECT FY 05/06.

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- 12. DRAFT RESOLUTION APPROVING VARIANCE V04-03 AND SITE DEVELOPMENT PERMIT SDP05-21(M) AT 25205 MANZANITA DRIVE**  
*[STRATEGIC PLAN: EVALUTE LAND USE ISSUES TO ENSURE THAT THE GOALS, POLICIES, AND PROGRAMS OF THE GENERAL PLAN REFLECT THE COMMUNITY'S VISION AND MISSION]*

This item was removed from the Consent Calendar by Council Member Harkey.

IT WAS MOVED BY MAYOR PRO TEM ANDERSON, SECONDED BY MAYOR RAYFIELD, TO ADOPT **RESOLUTION NO. 05-09-14-03**, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, GRANTING THE APPEAL AND REVERSING THE PLANNING COMMISSION'S DENIAL OF VARIANCE V04-03 TO ALLOW A NEW 2,930 SQUARE FOOT, TWO-STORY SINGLE-FAMILY DWELLING AND ATTACHED 412 SQUARE FOOT GARAGE TOGETHER MEASURING 29.25 FEET IN HEIGHT, INSTEAD OF THE MAXIMUM ALLOWABLE HEIGHT OF 26 FEET AND A MINOR SITE DEVELOPMENT PERMIT SDP05-21 (M) FOR RETAINING WALLS AS HIGH AS 12 FEET ON A 4,507 SQUARE FOOT LOT IN THE RESIDENTIAL SINGLE FAMILY 22 (RSF 22) ZONING DISTRICT AT 25205 MANAZANITA DRIVE.

The motion carried by the following vote:

AYES:	Council Members Chilton, Lacy, Mayor Pro Tem Anderson and Mayor Rayfield
NOES:	Council Member Harkey
ABSENT:	None

## **ORAL REPORTS**

Mayor Rayfield reported that City Manager Chotkevys was ill and unable to attend tonight's meeting. Director of Administrative Services Apodaca was filling in for him.

Council Member Harkey announced that her daughter was in the audience.

## **PUBLIC COMMENTS**

Mayor Rayfield opened the meeting for public comments.

Lisa Bartlett, Dana Point, spoke regarding the Town Center Specific Plan and submitted a letter from C.A.R.E. Dana Point requesting the plan be placed on the June 2006 ballot.

Linda Brame, Dana Point, spoke regarding the Town Center project.

Pam Tappan, Capistrano Beach, spoke regarding the selection of subcommittee members, the new City Motto, and mobile homes. Ms. Tappan also spoke regarding the

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Residential Building Heights Subcommittee and submitted a photo of a Dana Point property in which the roof overhangs the common wall.

John Chaffetz, Dana Point, spoke regarding enforcement issues with dogs and also water quality on City beaches.

Linda Culver, Dana Point, spoke regarding the Town Center project.

Bill Walter, Dana Point, spoke regarding the Town Center project and submitted a folder containing copies of his previous requests for public records.

Dick Mackaig, Dana Point, spoke regarding the behavior of a Council Member at a recent event.

Mayor Rayfield declared a recess at 7:03 p.m. and reconvened the meeting at 7:18 p.m. All Council Members were present, with the exception of Council Member Lacy who returned to the Council Chamber at 7:20 p.m.

**PUBLIC HEARINGS**

There were no public hearings.

**UNFINISHED BUSINESS**

**13. HOUSING ASSISTANCE PILOT PROGRAM** *[STRATEGIC PLAN: ACHIEVE TOTAL EXCELLENCE IN MUNICIPAL SERVICES AND CITY ADMINISTRATION/PLANNING WITH EXCELLENT CUSTOMER SERVICE AND COST-EFFECTIVENESS]*

Director of Administrative Services Apodaca presented the staff report.

IT WAS MOVED BY COUNCIL MEMBER HARKEY, SECONDED BY COUNCIL MEMBER CHILTON, TO APPROVE THE TRANSFER IN AFFORDABLE HOUSING IN-LIEU FEES FROM A FIDUCIARY ACCOUNT, INTO THE NON-DEPARTMENTAL RESERVE FOR SERVICES ENHANCEMENTS ACCOUNT FOR THE HOUSING ASSISTANCE PILOT PROGRAM.

The motion carried by the following vote:

AYES:	Council Members Chilton, Harkey, Lacy, Mayor Pro Tem Anderson and Mayor Rayfield
NOES:	None
ABSENT:	None

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**14. HURRICANE KATRINA DISASTER RELIEF**

Director of Administrative Services Apodaca introduced Emergency and Support Services Manager Rose, who presented the staff report.

Pam Tappan, Capistrano Beach, spoke in support of disaster relief efforts and submitted information regarding emergency preparedness workshops being conducted by the Office of Infrastructure Preparedness.

IT WAS MOVED BY MAYOR PRO TEM ANDERSON, SECONDED BY COUNCIL MEMBER HARKEY, TO APPROVE THE STAFF RECOMMENDATION TO IMPLEMENT AN "ADOPT-A-CITY" RELATIONSHIP WITH THE CITY OF SLIDELL, LOUISIANA.

The motion carried by the following vote:

AYES: Council Members Chilton, Harkey, Lacy,  
Mayor Pro Tem Anderson and Mayor Rayfield  
NOES: None  
ABSENT: None

**15. AMENDMENT OF CITY'S CONFLICT OF INTEREST CODE [STRATEGIC PLAN: ACHIEVE TOTAL EXCELLENCE IN MUNICIPAL SERVICES AND CITY ADMINISTRATION/PLANNING WITH EXCELLENT CUSTOMER SERVICE AND COST-EFFECTIVENESS]**

Director of Administrative Services Apodaca introduced City Attorney Muñoz, who presented the staff report.

IT WAS MOVED BY COUNCIL MEMBER LACY, SECONDED BY COUNCIL MEMBER HARKEY, TO ADOPT **RESOLUTION NO. 05-09-14-04, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING THE CITY'S CONFLICT OF INTEREST CODE.**

The motion carried by the following vote:

AYES: Council Members Chilton, Harkey, Lacy,  
Mayor Pro Tem Anderson and Mayor Rayfield  
NOES: None  
ABSENT: None



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**NEW BUSINESS**

- 16. AWARD CONTRACT TO THE PLANNING CENTER TO UPDATE THE HOUSING ELEMENT** *[STRATEGIC PLAN: ACHIEVE TOTAL EXCELLENCE IN MUNICIPAL SERVICES AND CITY ADMINISTRATION/PLANNING WITH EXCELLENT CUSTOMER SERVICE AND COST-EFFECTIVENESS]*

Director of Administrative Services Apodaca introduced Director of Community Development Butterwick, who presented the staff report.

IT WAS MOVED BY COUNCIL MEMBER LACY, SECONDED BY MAYOR PRO TEM ANDERSON, TO (1) AUTHORIZE THE CITY MANAGER TO FINALIZE THE SCOPE OF WORK AND ENTER INTO AN AGREEMENT WITH THE PLANNING CENTER; AND (2) TRANSFER FUNDS FROM THE RESERVE FOR SERVICE ENHANCEMENT FUND TO THE COMMUNITY DEVELOPMENT DEPARTMENT, PLANNING DIVISION ACCOUNT 223.

The motion carried by the following vote:

AYES:	Council Members Chilton, Harkey, Lacy, Mayor Pro Tem Anderson and Mayor Rayfield
NOES:	None
ABSENT:	None

**STAFF REPORTS**

There were no staff reports.

**COUNCIL REPORTS**

Council Member Chilton reported he, Mayor Rayfield and Mayor Pro Tem Anderson had attended the Boys and Girls Club of Capistrano Valley annual gala event on Saturday, September 10<sup>th</sup>, an event which had received tremendous support.

Council Member Chilton noted the next Traffic Improvement Subcommittee meeting would be held on Wednesday, September 21<sup>st</sup> at City Hall, where the issue of street sweeping would be discussed. Citizen participation in that discussion was highly encouraged.

Council Member Lacy reported on his attendance at the art walk held at Cliff Wassmann's gallery on the first Friday of the month. The event was well attended and beautiful art had been displayed.

Council Member Lacy reported on yesterday's meeting of the Ocean Water Quality Subcommittee, where progress is being made regarding an incentive program for restaurants involving grease traps.

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Council Member Lacy noted that the appointment of Congressman Chris Cox as Chairman of the Securities and Exchange Commission has resulted in the City of Dana Point being without a Congress Member for the next few months due to the pending special election. This could potentially affect our City's ability to obtain federal support for cleanup of the harbor and a defining benchmark study of the sources of pollution at Doheny State Beach. An active effort to gain assistance with these issues from other Congress Members in areas close to Dana Point is being conducted.

Council Member Lacy reported that on August 30<sup>th</sup> he and his wife had celebrated their eighteenth wedding anniversary by renewing their vows at St. Edwards Church.

Council Member Harkey reminded everyone of the upcoming Dana Point/Capistrano Beach Historical Society Home Tour on October 2<sup>nd</sup> from 11 a.m. to 4 p.m. and noted her home would be included in the tour.

Council Member Harkey stated she would be hosting an event for State Senator John Campbell, who is running for Congressman Cox's vacated seat, on September 24<sup>th</sup> from 4 p.m. to 6 p.m. at her home and invited everyone to attend.

Council Member Harkey reported on her attendance at a Library Advisory Board meeting on behalf of Council Member Chilton, who was unable to attend. Under the County of Orange's new allocation of funds, Dana Point would receive the same amount as last year, rather than a reduced amount as was previously planned.

Council Member Harkey stated Assemblywoman Mimi Walters will conduct a session on illegal immigration at the Laguna Hills Community Center on Thursday, September 22<sup>nd</sup> from 6 – 8 p.m.

Council Member Harkey requested a study session be conducted to review the recommended revisions to City Council policies by Mayor Pro Tem Anderson and Council Member Lacy prior to them being submitted for approval at a regular City Council meeting.

Council Member Harkey spoke regarding the letter submitted at this meeting by Lisa Bartlett of C.A.R.E. Dana Point and in favor of submitting the Town Center Specific Plan to the voters in 2006.

Mayor Pro Tem Anderson spoke regarding financial discussions held by the Foothill/Eastern Transportation Corridor Agency and the San Joaquin Hills Transportation Corridor Agency. The San Joaquin Hills Transportation Corridor is in danger of going into default in 2007. The Boards have been attempting to come up with a proposal whereby the Foothill/Eastern TCA would make payments to the San Joaquin Hills TCA to mitigate future impacts from the proposed extension of the Foothill Corridor Road, which is the Foothill South, as well as allowing the San Joaquin Hills TCA to take out loans against the Foothill Eastern TCA.

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Mayor Pro Tem Anderson reported on the Dog Fun Zones in selected Dana Point parks. The fenced dog runs have been installed on a trial basis.

Mayor Pro Tem Anderson stated that October is National Breast Cancer Awareness Month and also noted that heart disease kills more women than the next six largest causes of death combined.

Mayor Pro Tem Anderson reported the Utility Undergrounding Subcommittee had a productive meeting last week and was working as quickly as possible on the issue of undergrounding utilities in Dana Point neighborhoods.

Mayor Pro Tem Anderson reminded everyone of the Town Center Subcommittee meeting to be held tomorrow, September 15<sup>th</sup>.

Mayor Rayfield spoke of the West Nile Virus, a serious threat to our country, and the need to get rid of standing water around properties.

Mayor Rayfield stated the harbor revitalization project's Environmental Impact Report will be published by September 27<sup>th</sup> for public review and comment during a 45 day comment period.

Mayor Rayfield spoke regarding breast cancer survivor Kim Tilley of the Harbor Association. On Sunday, September 25<sup>th</sup>, Dana Wharf Sportsfishing is sponsoring a twilight cruise in the harbor with the proceeds going to fight breast cancer.

Mayor Rayfield stated Saturday, September 17<sup>th</sup> is National Beach Clean Up Day. Doheny State Beach will be cleaned from 8 – 11 a.m. and Salt Creek Beach will be cleaned from 9 a.m. – 12 p.m. Volunteers need only to show up on Saturday to help out.

Mayor Rayfield noted that Friday, September 16<sup>th</sup> would be an observance of POW/MIA's as well as Developmental Disabilities Day.

Mayor Rayfield reported that flu shots for seniors would be available October 22<sup>nd</sup> at the Dana Point Community Center.

Mayor Rayfield reported the Town Center Subcommittee regular meeting will be held tomorrow evening at 6:00 p.m., where the primary topic for discussion will be building heights. Friday, September 16<sup>th</sup> at 8 a.m. a special briefing will be held primarily for business owners and business property owners to inform them of the subcommittee accomplishments to date and the future topics to be addressed.

Mayor Rayfield provided a status report on the pilot circulation program to move the water around at Baby Beach, which is cause for optimism as circulation has long been suspected as a critical factor in the postings at the beach.

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Mayor Rayfield stated the Salt Creek Treatment Facility will go into use in order to fine-tune the operation before actually activating. A ribbon cutting ceremony will be held mid-October.

**ADJOURNMENT**

There being no further business before the City Council at this session, Mayor Rayfield declared the meeting adjourned at 8:36 p.m.

The next Regular Meeting of the City Council will be September 28, 2005 at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

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ELIZABETH EHRLING  
CITY CLERK

APPROVED AT THE MEETING OF SEPTEMBER 28, 2005