

# CITY OF DANA POINT

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## CITY COUNCIL REGULAR MEETING



**TUESDAY  
OCTOBER 3, 2017  
4:00 P.M.**

## **ACTION AGENDA**

**Location: City Council Chamber, 33282 Golden Lantern, Suite 210, Dana Point, California 92629**

Next City Council Ordinance No. 17-04

## **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 4:02 p.m. in the City Council Chambers, 33282 Golden Lantern, Dana Point.

## **ROLL CALL OF CITY COUNCIL MEMBERS:**

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

## **CLOSED SESSION**

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

- A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION, Government Code § 54957  
Title: City Manager (setting goals and objectives)
- B. CITY ATTORNEY SERVICES PERFORMANCE EVALUATION, Government Code § 54957  
Title: City Attorney (setting goals and objectives)
- C. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION, SIGNIFICANT EXPOSURE TO LITIGATION, Government Code § 54956.9 (d1), (1 case)

- D. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION, Government Code § 54956.9 (a), (3 cases)
- i. Name of Case: City of DP v. Pickering, Case No. 16HM10192
  - ii. Volkmann v. City of DP, OC Superior Case No. 30-2017-00914962-CU-EI-CXC
  - iii. City of DP v. The Sunshine Group LLC, Case No. OCSC Case No. 30-2017-00915900

Mayor Lewis recessed the meeting into a Closed Session at 4:04 p.m. pursuant to Government Code Section 54956 et seq

## **RECONVENE CITY COUNCIL MEETING – CALL TO ORDER**

Mayor Lewis reconvened the meeting at 6:10 p.m. All Council Members were present.

STAFF PRESENT: Mark Denny, City Manager; Patrick Munoz, City Attorney; Mike Killebrew, Assistant City Manager; Mike Rose, Director of General Services; Lt. Russ Chilton, Chief of Police; Ursula Luna-Reynosa, Director of Community Development; Matthew Sinacori, Director of Public Works and Engineering; Matthew Schneider, Planning Manager; Brian McClure, Deputy Director of Community Services and Parks; Belinda Deines, Senior Planner; Sean Nicholas, Senior Planner; Kelly Reenders, Economic Development Manager; Gail Enriquez, City Clerk Specialist; and Bobbi Ogan, Deputy City Clerk.

## **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Council Member Muller.

## **CLOSED SESSION ANNOUNCEMENT**

City Attorney Munoz stated he had two announcements:

- 1) The TEFRA (Tax Equity and Fiscal Responsibility Act) hearing noticed for this evening has been continued to the October 17, 2017 City Council meeting, and;
- 2) A Motion was made by the Mayor, in Closed Session, Seconded by the Mayor Pro Tem, to retain Patrick Munoz as Acting City Attorney while the City transitions to in-house Counsel, and appoint two council members to act as a search committee to bring a recommendation back at the next City Council meeting. The motion failed on a 2-3 vote, with the Mayor and Mayor Pro Tem voting Ayes, and Council Members Muller, Tomlinson and Viczorek voting Noes.

## **INVOCATION**

The Invocation was provided by OCFA Chaplain Jeff Hetschel.

## **PRESENTATIONS AND PROCLAMATIONS**

Employee Recognition – Sherry Murphy

Employee Recognition – Kolleen Wallace, Monique Leon, and Oscar Estrada

## **CONSENT CALENDAR**

Mayor Pro Tem Wyatt removed Item 5 and Mayor Lewis removed Items 8, 9, 10, and 15 from the Consent Calendar.

IT WAS MOVED BY MAYOR PRO TEM WYATT, SECONDED BY COUNCIL MEMBER MULLER, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEMS 5, 8, 9, 10, and 15.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

**1. WAIVE THE READING OF ORDINANCES AND APPROVE READING BY TITLE ONLY**

APPROVED THE READING BY TITLE ONLY OF ALL ORDINANCES ON THE CONSENT CALENDAR AND THAT FURTHER READING OF SUCH ORDINANCES BE WAIVED.

**2. REGULAR MEETING MINUTES, SEPTEMBER 19, 2017**

APPROVED THE MINUTES.

**3. PLANNING COMMISSION MEETING MINUTES, AUGUST 28, 2017**

RECEIVED AND FILED.

**4. PLANNING COMMISSION ACTIONS, MEETING OF SEPTEMBER 25, 2017**

RECEIVED AND FILED.

**5. HOMELESS TASK FORCE MINUTES, AUGUST 30, 2017**

Mayor Pro Tem Wyatt removed this item from the Consent Calendar.

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

The motion carried by the following vote:

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

NOES: None

ABSENT: None

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

RECEIVED AND FILED.

**7. YOUTH BOARD SPECIAL MEETING MINUTES, SEPTEMBER 14, 2017**

RECEIVED AND FILED.

**8. CLAIMS AND DEMANDS**

Mayor Lewis removed this item from the Consent Calendar.

IT WAS MOVED BY MAYOR LEWIS, SECONDED BY COUNCIL MEMBER MULLER, THAT THE CITY COUNCIL RECEIVE AND FILE THE CLAIMS AND DEMANDS.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

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

Mayor Lewis removed Items 9 and 10 from the Consent Calendar.

**10. MONTHLY FINANCIAL ACTIVITY REPORT, JULY 2017**

IT WAS MOVED BY MAYOR LEWIS, SECONDED BY COUNCIL MEMBER MULLER, THAT THE CITY COUNCIL RECEIVE AND FILE BOTH THE CITY TREASURER'S REPORT FOR AUGUST 2017 AND THE MONTHLY FINANCIAL ACTIVITY REPORT FOR JULY 2017.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

**11. RESOLUTIONS AUTHORIZING STAFF TO APPLY FOR THE OUTDOOR ENVIRONMENTAL EDUCATION FACILITIES GRANT AND HABITAT CONSERVATION GRANT, FOR FUNDS PROVIDED FROM THE CALIFORNIA CLEAN WATER, CLEAN AIR, SAFE NEIGHBORHOOD PARKS AND COASTAL PROTECTION ACT OF 2002 AND THE CALIFORNIA WILDLIFE PROTECTION ACT OF 1990**

ADOPTED **RESOLUTION 17-10-03-01** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING THE APPLICATION FOR THE OUTDOOR ENVIRONMENTAL EDUCATION FACILITIES GRANT FUNDS; and*

**RESOLUTION 17-10-03-02** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING THE APPLICATION FOR GRANT FUNDS FROM THE HABITAT CONSERVATION FUND PROGRAM; and*

AUTHORIZED THE CITY MANAGER OR HIS DESIGNEES TO APPLY FOR SUBJECT GRANTS.

**12. SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING SECTION 2.04.041(C) AND (D) OF THE DANA POINT MUNICIPAL CODE REGARDING PERMANENT RETENTION OF CITY AUDIO/VIDEOS**

HELD SECOND READING AND ADOPTED **ORDINANCE 17-04** ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING TITLE 2 OF THE CITY OF DANA POINT MUNICIPAL CODE AT SECTION 2.04.041 (c) AUDIO AND VIDEO TAPE RETENTION AND (d) AUDIO TAPE ACCESSIBILITY TO THE PUBLIC.*

**13. AMENDING CHAPTER 6.14.002, PUBLIC NUISANCES DESIGNATED, OF THE MUNICIPAL CODE, TO DECLARE A PUBLIC NUISANCE EXISTS WHEN A FACILITY THAT SHOULD BE LICENSED PURSUANT TO HEALTH AND SAFETY CODE SECTION 11834.01 ET .SEQ., OR ANY OTHER PROVISION OF LAW, OPERATES WITHOUT A LICENSE OR OTHER REQUIRED APPROVAL, OR OPERATES IN VIOLATION OF A REQUIRED LICENSE OR APPROVAL**

HELD SECOND READING AND ADOPTED **ORDINANCE 17-05** ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 6.14.002, PUBLIC NUISANCES DESIGNATED, OF THE MUNICIPAL CODE, TO DECLARE A PUBLIC NUISANCE EXISTS WHEN A FACILITY THAT SHOULD BE LICENSED PURSUANT TO HEALTH AND SAFETY CODE SECTION 11834.01 ET. SEQ., OR ANY OTHER PROVISION OF LAW, OPERATES WITHOUT A LICENSE OR OTHER REQUIRED APPROVAL, OR OPERATES IN VIOLATION OF A REQUIRED LICENSE OR APPROVAL.*

**14. ASSOCIATION OF CALIFORNIA CITIES – ORANGE COUNTY MEMBERSHIP**

AUTHORIZED THE CITY MANAGER TO EXECUTE AN ANNUAL CITY MEMBERSHIP IN THE ASSOCIATION OF CALIFORNIA CITIES – ORANGE COUNTY; AND, INCREASE THE BUDGET IN ACCOUNT #99-2090 BY \$10,000.00.

**15. MAYOR DEBRA LEWIS APPOINTMENT OF JOSEPH JAEGER TO FINANCIAL REVIEW COMMITTEE**

Mayor Lewis removed this item from the Consent Calendar.

IT WAS MOVED BY MAYOR LEWIS, SECONDED BY COUNCIL MEMBER MULLER TO RATIFY MAYOR DEBRA LEWIS' APPOINTMENT OF JOSEPH JAEGER TO THE FINANCIAL REVIEW COMMITTEE.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

**PUBLIC COMMENTS**

There were no Public Comments received.

**PUBLIC HEARINGS**

**16. AN APPEAL OF PLANNING COMMISSION APPROVAL FOR COASTAL DEVELOPMENT PERMIT CDP17-0008; SITE DEVELOPMENT PERMIT SDP17-0013/MINOR CONDITIONAL USE PERMIT CUP17-0005(M) FOR A NEW 57 ROOM HOTEL, 4,000 SQUARE FOOT RESTAURANT SPACE WITH OUTDOOR DINING, 40-BED HOSTEL, VISITOR CENTER, RETAINING WALLS GREATER THAN 30 INCHES IN HEIGHT VISIBLE FROM THE PUBLIC RIGHT-OF-WAY, AND TANDEM PARKING FOR EMPLOYEES/VALET, WAVE RESORT (HEADLANDS COMMERCIAL SITE) LOCATED AT 34075 PACIFIC COAST HIGHWAY WITHIN THE COASTAL ZONE**

IT WAS MOVED BY MAYOR PRO TEM WYATT, SECONDED BY COUNCIL MEMBER MULLER, THAT THE CITY COUNCIL DENY THE APPEAL AND UPHOLD THE PLANNING COMMISSION'S APPROVAL OF COASTAL DEVELOPMENT PERMIT CDP17-0008/SITE DEVELOPMENT PERMIT SDP17-0013/MINOR CONDITIONAL USE PERMIT CUP17-0005(M) AND ADOPT **RESOLUTION 17-10-03-03** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION APPROVAL OF COASTAL DEVELOPMENT PERMIT CDP17-0008/SITE DEVELOPMENT PERMIT SDP17-0013/MINOR CONDITIONAL USE PERMIT CUP17-0005(M) FOR THE DEVELOPMENT OF A 35,000 SQUARE FOOT HOTEL, RESTAURANT, VISITOR CENTER, AND HOSTEL DEVELOPMENT LOCATED AT 34075 PACIFIC COAST HIGHWAY.*

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis  
NOES: None  
ABSENT: None

## UNFINISHED BUSINESS

### 17. CITYWIDE PARKING IMPLEMENTATION PLAN

IT WAS MOVED BY MAYOR PRO TEM WYATT, SECONDED BY MAYOR LEWIS TO REFER THIS ITEM BACK TO STAFF TO CREATE A REFINED TASK FORCE VISION & MISSION FOR COUNCIL APPROVAL, INITIAL DRAFT OF PURPOSE AND LIST OF MEMBERS BY THE FIRST MEETING IN NOVEMBER.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis  
NOES: Council Member Richard A. Viczorek  
ABSENT: None

## NEW BUSINESS

### 21. DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT ANNUAL REPORT AND RENEWAL FOR 2017

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY MAYOR PRO TEM WYATT TO RECEIVE AND FILE THE DANA POINT TOURISM IMPROVEMENT DISTRICT QUARTERLY REPORT FOR JULY-SEPTEMBER 2017.

The motion carried by the following vote:

AYES: Council Member Joseph L. Muller, Council Member John A. Tomlinson, Council Member Richard A. Viczorek, Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis  
NOES: None  
ABSENT: None

IT WAS MOVED BY COUNCIL MEMBER TOMLINSON, SECONDED BY MAYOR PRO TEM WYATT THAT THE CITY COUNCIL ADOPT **RESOLUTION 17-10-03-04** ENTITLED:

*A RESOLUTION OF THE CITY OF DANA POINT, CALIFORNIA, CONFIRMING THE 2018 ANNUAL REPORT AND DECLARING THE INTENTION OF THE CITY COUNCIL TO*

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*CONTINUE THE PROGRAM AND ASSESSMENTS FOR THE 2018 CALENDAR YEAR FOR THE DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID)*

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The motion carried by the following vote:

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

NOES: None

ABSENT: None

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY COUNCIL MEMBER TOMLINSON TO SET THE DATE FOR PUBLIC HEARING FOR RENEWAL OF THE DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT ON NOVEMBER 7, 2017.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

**18. NO SMOKING IN PUBLIC PLACES ORDINANCE**

IT WAS MOVED BY COUNCIL MEMBER MULLER, SECONDED BY COUNCIL MEMBER VICZOREK TO DIRECT STAFF AND CITY ATTORNEY TO REVIEW THE ORDINANCE AND PREPARE A FINAL VERSION FOR FIRST READING AT THE FIRST COUNCIL MEETING IN DECEMBER.

The motion carried by the following vote:

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

NOES: Mayor Pro Tem Paul N Wyatt and Mayor Debra Lewis

ABSENT: None

**IN THE INTEREST OF TIME, ITEMS 19, AND 20 WERE MOVED TO THE NEXT REGULAR CITY COUNCIL MEETING OF OCTOBER 17, 2017.**

**19. STORY POLE ORDINANCE**

RECOMMENDED ACTION: That the City Council:

- 1) Consider a proposed amendment to Dana Point Municipal Code requiring the use of staking ("story poles") for development projects; and
- 2) Discuss the proposed ordinance and provide direction to staff to prepare a final version for first reading at the next regular City Council meeting.



**20. OPEN DATA POLICY AND ESTABLISHMENT OF COUNCIL SUBCOMMITTEE TO OVERSEE PROGRESS AND IMPLEMENTATION**

RECOMMENDED ACTION: That the City Council:

- 1) Consider the proposed City of Dana Point Open Data Policy; and
- 2) Establish a City Council Subcommittee to oversee progress and implementation of the Open Data Policy.

**IN THE INTEREST OF TIME AND TO ALLOW MAYOR PRO TEM WYATT TO PROVIDE DISCUSSION, ITEM 22 WAS MOVED TO THE REGULAR CITY COUNCIL MEETING IN DECEMBER.**

**22. FISCAL YEAR 2017-18 PROPOSED BUDGET ADJUSTMENTS (CARRY-OVER)**

RECOMMENDED ACTION: That the City Council amend the FY2017-18 ("FY18") budget by authorizing the carry-over and re-appropriation encumbered and unencumbered funds from FY17 to FY18.

**23. ADOPTION OF A RESOLUTION APPROVING THE SB-1 PROJECT LIST FOR FY17-18**

IT WAS MOVED BY COUNCIL MEMBER TOMLINSON, SECONDED BY MAYOR PRO TEM WYATT THAT THE CITY COUNCIL ADOPT **RESOLUTION 17-10-03-05** ENTITLED:

*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT APPROVING THE FY17-18 SB-1 PROJECT LIST TO INCLUDE ARTERIAL ROADWAY RESURFACING-CROWN VALLEY PARKWAY FROM PCH TO CAMINO DEL AVION (CIP#1310).*

The motion carried by the following vote:

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

NOES: None

ABSENT: None

**PUBLIC COMMENTS (Continued)**

There were no additional Public Comments received.

**STAFF REPORTS**

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

**24. COUNCILMAN MULLER: DISCUSS PROCEDURES FOR HANDLING COMPLAINTS AGAINST COUNCIL-APPOINTED COMMISSION, COMMITTEE AND TASK FORCE MEMBERS**

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## **ADJOURNMENT**

Mayor Lewis adjourned the meeting at 11:25 p.m. in memory of Mrs. Ruth Levitan who was 97 years old and had passed away last week after attending an Emeritus event at the Community Center and in memory of Joe Trimm a longtime Dana Point Volunteer In Police Services (VIP) and announced that the next Regular Meeting of the City Council will be October 17, 2017, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.