

# CITY OF DANA POINT

## CITY COUNCIL REGULAR MEETING



**TUESDAY  
JANUARY 16, 2018  
5:00 P.M.**

## MINUTES

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

Next City Council Ordinance No. 18-01

## CALL TO ORDER

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

## ROLL CALL OF CITY COUNCIL MEMBERS:

Richard A. Viczorek, Mayor  
Joseph L. Muller, Mayor Pro Tem  
Debra Lewis, Council Member  
John A. Tomlinson, Council Member (*Arrived at 5:03 p.m.*)  
Paul N Wyatt, Council Member

## CLOSED SESSION

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

### A. CODE ENFORCEMENT UPDATE

- a. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION, Government Code § 54956.9 (a), (2 cases)
  - i. City of DP v. Sunshine Group LLC (Seaside Inn), Orange County Superior Court Case No. 30-2017- 00915900
  - ii. Thomas Volkmann v. City of DP, Orange County Superior Court Case No. 30-2017-00914962-CU-EI-CXC

- b. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION, Significant Exposure to Litigation, Government Code § 54956.9 (d)(2) (3 cases)

### B. UNLICENSED RESIDENTIAL RECOVERY FACILITIES

- a. CONFERENCE WITH LEGAL COUNCIL – EXISTING LITIGATION, Government Code Section 54956.9 (a) (2 cases)
  - i. City v. New Method Wellness, Inc., NMW Beds, LLC, and Pacific View Sober Living LLC, Orange County Superior Court Case No. 30-2017-00904169
  - ii. City v. Capo by the Sea, LLC, Orange County Superior Court Case No. 30-2016-00859426
- b. CONFERENCE WITH LEGAL COUNCIL – ANTICIPATED LITIGATION, Significant Exposure to Litigation, Government Code Section 54956.9 (d)(2) 7 cases

Mayor Viczorek 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 Viczorek reconvened the meeting at 6:00 p.m. All Council Members were present.

STAFF PRESENT: Mark Denny, City Manager; Patrick Munoz, City Attorney; Mike Killebrew, Assistant City Manager; Kathy Ward, City Clerk; Mike Rose, Director of General Services; Lt. Russ Chilton; Ursula Luna-Reynosa, Director of Community Development; Matthew Sinacori, Director of Public Works and Engineering; Matthew Schneider, Planning Manager; Jennifer Anderson, Senior Management Analyst; and Bobbi Ogan, Deputy City Clerk.

## **CLOSED SESSION ANNOUNCEMENT**

City Attorney Munoz stated that he had nothing to report.

## **PLEDGE OF ALLEGIANCE**

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

## **INVOCATION**

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

## **PRESENTATIONS AND PROCLAMATIONS**

There were no Presentations or Proclamations

## **CONSENT CALENDAR**

A member of the Public removed Item 15, Council Member Lewis removed Items 10 and 12, and Council Member Wyatt removed Items 11, 13, and 17 from the Consent Calendar.

IT WAS MOVED BY MAYOR VICZOREK, SECONDED BY MAYOR PRO TEM MULLER, THAT THE RECOMMENDATIONS BE ACCEPTED FOR ALL ITEMS ON THE CONSENT CALENDAR WITH THE EXCEPTION OF ITEMS 10, 11, 12, 13, 15, and 17.

The motion carried by the following vote:

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

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, DECEMBER 5, 2017**

APPROVED THE MINUTES.

**3. PLANNING COMMISSION MEETING MINUTES, NOVEMBER 27, 2017**

RECEIVED AND FILED.

**4. PLANNING COMMISSION MEETING MINUTES, DECEMBER 11, 2017**

RECEIVED AND FILED.

**5. PLANNING COMMISSION ACTIONS, MEETING OF JANUARY 8, 2018**

RECEIVED AND FILED.

**6. TRAFFIC IMPROVEMENT SUBCOMMITTEE MINUTES, OCTOBER 18, 2017**

RECEIVED AND FILED.

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

RECEIVED AND FILED.

**8. CITY TREASURER'S REPORT, NOVEMBER 2017**

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

**9. CLAIMS AND DEMANDS**

RECEIVED AND FILED THE CLAIMS AND DEMANDS.

**10. DANA POINT POLICE SERVICES MONTHLY REPORT**

Council Member Lewis removed this item from the Consent Calendar.

Lt. Chilton provided a PowerPoint presentation.  
Brief discussion ensued.

IT WAS MOVED BY MAYOR VICZOREK, SECONDED BY MAYOR PRO TEM MULLER, THAT THE CITY COUNCIL RECEIVE AND FILE THIS REPORT.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

## **11. DEVELOPMENT UPDATE**

Council Member Wyatt removed this item from the Consent Calendar.

Brief discussion ensued.

IT WAS MOVED BY MAYOR VICZOREK, SECONDED BY MAYOR PRO TEM MULLER, THAT THE CITY COUNCIL RECEIVE AND FILE THIS UPDATE.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

## **12. COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2017**

Council Member Lewis removed this item from the Consent Calendar.

Betty Hill, Capistrano Beach, provided comments regarding the CAFR and the budget.

Discussion ensued.

IT WAS MOVED BY MAYOR VICZOREK, SECONDED BY MAYOR PRO TEM MULLER, THAT THE CITY COUNCIL RECEIVE AND FILE THE COMPREHENSIVE ANNUAL FINANCIAL REPORT ("CAFR") FOR THE YEAR ENDED JUNE 30, 2017.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

**13. MONTHLY FINANCIAL ACTIVITY REPORT, NOVEMBER 2017**

Council Member Wyatt removed this item from the Consent Calendar.

Brief discussion ensued.

IT WAS MOVED BY MAYOR VICZOREK, SECONDED BY COUNCIL MEMBER WYATT, THAT THE CITY COUNCIL RECEIVE AND FILE THE MONTHLY FINANCIAL ACTIVITY REPORT FOR NOVEMBER 2017.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

**14. SECOND READING FOR THE ZONE TEXT AMENDMENT ZTA17-0001 TO AMEND VARIOUS PORTIONS OF THE ZONING ORDINANCE TO ADDRESS TYPOGRAPHICAL ERRORS, CLARIFY SECTIONS OF THE CODE, AND MODIFICATIONS CONSISTENT WITH RECENT STATE LAW CHANGES, 2017 ZONING CODE CLEANUP**

HELD A SECOND READING AND ADOPTED **ORDINANCE 18-01** ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA17-0001 TO MODIFY AND ADD VARIOUS PROVISIONS TO THE ZONING ORDINANCE AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA17-0003 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.*

**15. SECOND READING AND ADOPTION OF NO SMOKING IN PUBLIC PLACE ORDINANCE**

A member of the Public removed this item from the Consent Calendar.

Mike Darnold, San Juan Capistrano, spoke regarding vaping devices and stated that he would support the Ordinance.

Ximena Bustos, Laguna Niguel, shared her reasons for supporting the Ordinance.

Hannya Soto, Laguna Niguel, (SOS Paths), shared her reasons for supporting the Ordinance.

Brandon Osorio, Dana Point, shared his reasons for supporting the Ordinance.

Armon Ashoubi, Laguna Niguel, (Dana Hills High School Surfrider Club President) spoke regarding the amount of cigarette butts that are collected during clean ups.

Ravi Choudhuri, Brea, (American Lung Association), spoke regarding their support of the Ordinance.

Douglas Kelly, Dana Point, spoke in opposition of the Ordinance.

Nancy Leonard, Dana Point, spoke regarding the next steps should the Ordinance be adopted.

Rick Erkeneff, Dana Point, (Chairman of the OC Surfrider Foundation, reported on the latest clean-up day and the amount of cigarette butts that were collected.

Hoiyin Ip, Dana Point, spoke in support of the Ordinance.

Julian Joshua, Dana Point, shared his reasons for supporting the Ordinance.

Alan Bell, Dana Point, shared his reasons for supporting the Ordinance.

Carol Kelly, Dana Point, spoke in support of the Ordinance.

Jonathan Lukoff, Laguna Beach, spoke in support of the Ordinance.

IT WAS MOVED BY COUNCIL MEMBER LEWIS, SECONDED BY COUNCIL MEMBER WYATT, THAT THE CITY COUNCIL HOLD A SECOND READING AND ADOPT **ORDINANCE 18-02** ENTITLED:

*AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 6.40 OF THE DANA POINT MUNICIPAL CODE RELATING TO THE REGULATION AND PROHIBITION OF SMOKING IN THE CITY.*

The motion carried by the following vote:

AYES: Council Member Debra Lewis, Council Member John A. Tomlinson, and Council Member Paul N Wyatt

NOES: Mayor Pro Tem Joseph L. Muller and Mayor Richard A. Viczorek

ABSENT: None

**16. MANAGEMENT OF CITY ATTORNEY (Carried Over from December 5, 2017)**

CONSIDERED AND APPROVED A PROPOSED POLICY ENTITLED MANAGEMENT OF CITY ATTORNEY.

**17. CITY COUNCIL ANNUAL MEETING SCHEDULE**

Council Member Wyatt removed this item from the Consent Calendar.

Discussion ensued.

IT WAS MOVED BY COUNCIL MEMBER WYATT, SECONDED BY COUNCIL MEMBER LEWIS, THAT THE CITY COUNCIL APPROVE THE 2018 CITY COUNCIL MEETING SCHEDULE INCLUDING WORKSHOPS TO BE HELD ON COUNCIL MEETING DAYS PRIOR TO CLOSED SESSION.

The motion failed by the following vote:

AYES: Council Member Debra Lewis and Council Member Paul N Wyatt

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

ABSENT: None

Discussion ensued.

IT WAS MOVED BY MAYOR VICZOREK, SECONDED BY COUNCIL MEMBER TOMLINSON, THAT THE CITY COUNCIL APPROVE THE 2018 CITY COUNCIL MEETING SCHEDULE.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

## **PUBLIC COMMENTS**

Wayne Jost, Dana Point, spoke regarding the unique character of Dana Point and urged the Council to keep this in mind when making decisions.

Lisa Wilhelm, Capistrano Beach, spoke regarding short term rentals and her desire to be allowed to participate in the program.

Susan Swayze, Dana Point, spoke regarding the homeless in the City.

Jenene Rudder, Dana Point, spoke regarding the homeless in the City.

Michelle Baca, Dana Point, spoke regarding the homeless in the City.

Clare Josey, Dana Point, spoke regarding the homeless in the City.

Kathleen Joshua, Dana Point, asked the City Council to adopt a tree Ordinance to ensure views are protected.

Julian Joshua, Dana Point, asked the City Council to adopt an Ordinance regulating sober living homes.

Council Member Wyatt announced that the next Homeless Task Force meeting was scheduled for January 29<sup>th</sup> at 3:00 p.m. and encouraged everyone with concerns to attend.

## **PUBLIC HEARINGS**

There were no Public Hearings.

## **UNFINISHED BUSINESS**

### **18. 2018 SUMMER TROLLEY ROUTE MODIFICATIONS**

City Manager Denny introduced the item and Director Sinacori provided a PowerPoint presentation.

Discussion ensued.

IT WAS MOVED BY MAYOR VICZOREK, SECONDED BY COUNCIL MEMBER WYATT, THAT THE CITY COUNCIL RECEIVE AND PROVIDE FEEDBACK TO CITY STAFF ON THE PROPOSED TROLLEY ROUTE ALTERNATIVES.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

### **19. SHORT TERM RENTAL MANAGEMENT APPLICATION (Carried Over from December 5, 2017)**

Director Luna-Reynosa provided a PowerPoint presentation'

Brief discussion ensued.

### **20. PUBLIC WORKS REIMBURSABLE GRADING RELATED DEVELOPMENT ENGINEERING PLAN CHECK SERVICES BUDGET**

Director Sinacori provided a staff report.

IT WAS MOVED BY MAYOR VICZOREK, SECONDED BY MAYOR PRO TEM MULLER, THAT THE CITY COUNCIL APPROVE A BUDGET INCREASE TO COVER COSTS FOR PUBLIC WORKS DEVELOPMENT ENGINEERING PLAN CHECK SERVICES.

Discussion ensued.

The motion carried by the following vote:



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

NOES: None

ABSENT: None

Mayor Viczorek recessed the meeting at 8:58 p.m. and reconvened the meeting at 9:07 p.m.

**21. USER FEE SUBSIDY POLICY (Carried Over from December 5, 2017)**

Assistant City Manager Killebrew provided a staff report.

IT WAS MOVED BY COUNCIL MEMBER LEWIS, SECONDED BY COUNCIL MEMBER WYATT, THAT THE CITY COUNCIL DISCUSS AND ADOPT THE USER FEE SUBSIDY POLICY; AND RECEIVE AND FILE THE USER FEE STUDY REPORT.

Discussion ensued.

The motion carried by the following vote:

AYES: Council Member Debra Lewis, Council Member John A. Tomlinson, and Council Member Paul N Wyatt

NOES: Mayor Pro Tem Joseph L. Muller and Mayor Richard A. Viczorek

ABSENT: None

**NEW BUSINESS**

**22. CITY COUNCIL APPOINTED REPRESENTATIVES AND CITY COMMISSIONS, COMMITTEES, SUBCOMMITTEES AND TASK FORCES**

Mayor Viczorek invited those who had applied for the Parking and Circulation Oversight Committee to introduce themselves and answer questions of the Council. The City Council heard from the following applicants:

Barry Brandt  
Cindy Fleming  
Robin Valles

Discussion ensued.

IT WAS MOVED BY COUNCIL MEMBER WYATT, SECONDED BY COUNCIL MEMBER LEWIS, THAT THE CITY COUNCIL APPOINT CINDY FLEMING TO THE PARKING AND CIRCULATION OVERSIGHT COMMITTEE.

The motion carried by the following vote:

AYES: Council Member Debra Lewis, Council Member John A. Tomlinson, and Council Member Paul N Wyatt

NOES: Mayor Pro Tem Joseph L. Muller and Mayor Richard A. Viczorek

ABSENT: None

IT WAS MOVED BY COUNCIL MEMBER LEWIS, SECONDED BY COUNCIL MEMBER WYATT, THAT THE CITY COUNCIL DISCUSS ITEMS 1, 2, AND 5 SEPARATELY.

The motion carried by the following vote:

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

NOES: None

ABSENT: None

Discussion ensued.

IT WAS MOVED BY MAYOR VICZOREK, SECONDED BY COUNCIL MEMBER LEWIS, THAT THE CITY COUNCIL APPROVE APPOINTMENTS OF CITY COUNCIL REPRESENTATIVES TO OUTSIDE AGENCIES AS AMENDED; APPROVE APPOINTMENTS TO CITY COMMITTEES, SUBCOMMITTEES AND TASK FORCES; DIRECTED STAFF TO TAKE ACTION AS DEEMED APPROPRIATE; AND

- 1) ADOPTED **RESOLUTION 18-01-16-01** ENTITLED:  
*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DESIGNATING AND APPOINTING ITS REPRESENTATIVE TO THE ORANGE COUNTY FIRE AUTHORITY'S BOARD OF DIRECTORS; and*
- 2) ADOPTED **RESOLUTION 18-01-16-02** AS AMENDED ENTITLED:  
*A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ESTABLISHING A DANA POINT OCEAN WATER QUALITY SUBCOMMITTEE.*

The motion carried by the following vote:

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

NOES: None

ABSENT: None

## **PUBLIC COMMENTS (Continued)**

There were no additional Public Comments received.

## STAFF REPORTS

There were no staff reports.

## COUNCIL REPORTS, INCLUDING CITY RELATED MEETINGS ATTENDED

Council Member Wyatt stated that he had turned in his list of meetings attended to the City Clerk.

Council Member Lewis wished Lt. Chilton a Happy Birthday and stated that she would turn in her list of meetings attended.

Mayor Pro Tem Muller welcomed Division 3 Chief Capobianco and congratulated Ms. Fleming on her appointment. He stated that he had turned in his list of meetings attended to the City Clerk.

Mayor Viczorek stated that he had turned in his list of meetings attended.

## ADJOURNMENT

There being no further business before the City Council at this session, Mayor Viczorek adjourned the meeting at 10:24 p.m. and announced that the next Regular Meeting of the City Council will be February 6, 2018, 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 FEBRUARY 6, 2018

Meetings attended since December 5, 2017:

**Mayor Richard A. Viczorek**

December 14 TCA Board of Directors Meeting  
December 15 Dana Point Harbor Boat Parade

**Mayor Pro Tem Joseph L. Muller**

December 7 OC Parks  
December 13 California Coastal Commission  
December 14 California Coastal Commission  
December 18 OCFA  
December 20 OCFA John Abel Retirement  
January 4 OCFA  
January 10 OCFA  
January 11 TCA  
January 12 OC Parks

**Council Member Debra Lewis**

December 6 Edison Songs Briefing  
ACC-OC  
December 7 Pascal Le Vettet Bonjour Cafe  
Capistrano Unified School District  
Doheny Village Merchants Association  
December 8 Ocean Institute  
December 9 Boat Parade - Mayor Trophy Judging  
December 10-12 Washington DC Meeting with Legislators - ACCOC  
December 14 Dana Point Women's Club  
Dana Hills High School - Award  
December 17 Boat Parade Award Ceremony – Harbor Merchants  
December 20 Capo Cares, Mark Denny  
Mayor, Laguna Beach  
December 21 Karen Williams 211  
January 8 Meeting with Resident  
January 10 City Managers & Electeds SJC, SC, LB, LN  
January 12 HOA Board Meeting  
January 16 Don Barnes, Undersheriff - Niguel Shores Men's Club  
Resident

**Council Member Paul N Wyatt**

December 6 Assembly Member Brough Holiday Party  
December 12 Ocean Institute Board Meeting  
December 19 Faith Leaders Meeting on Homelessness  
December 20 Concern Resident on Green Lantern  
January 8 Faith Leaders Meeting on Homelessness

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January 10	Southwest OC Cities Collaboration on Homelessness
January 16	OC Taxpayers Forum on Cost of Public Safety

