

# CITY OF DANA POINT

**CITY COUNCIL  
REGULAR  
MEETING**



**TUESDAY  
NOVEMBER 15, 2016  
5:00 P.M.**

## **AGENDA**

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

Next City Council Ordinance No. 16-08

### **CALL TO ORDER**

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

John A. Tomlinson, Mayor  
Richard A. Viczorek, Mayor Pro Tem  
Joseph L. Muller, Council Member  
Carlos N. Olvera, Council Member  
J. Scott Schoeffel, Council Member

### **CLOSED SESSION**

- 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), (4 cases)

City of Dana Point, et al v Sobertec LLC, et al; Orange County Superior Court Case No. 30-2016-00859437-CU-MC-CJC; and

City of Dana Point, et al v. Capo By the Sea, Inc; Orange County Superior Court Case No. 30-2016-00859426-CU-MC-CJC

Surfrider Foundation v. City of Dana Point; San Diego Superior Court Case No. 37-2010-00099878

City of Dana Point v. Headlands Reserve LLC, Sanford Edward, et al (Orange County Superior Court Case No. 30-2016-00872051)

- C. CONFERENCE WITH LABOR NEGOTIATOR, Government Code § 54957.6

Agency Designated Representatives:                      Acting City Manager  
Unrepresented and Represented Employees:            All positions in City

- D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION, Government Code § 54957:  
Title: Acting City Manager
- E. PUBLIC EMPLOYMENT, Government Code § 54957: Title: Recruitment firm for City  
Manager recruitment

**RECESS OF CITY COUNCIL MEETING UNTIL 6:00 P.M.**

**RECONVENE CITY COUNCIL MEETING**

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**PRESENTATIONS AND PROCLAMATIONS**

Business of the Month - Schaar Art Studio  
Employee of the Month – Bobbi Ogan

**CONSENT CALENDAR**

All matters listed under the Consent Calendar are considered to be routine and all will be enacted by one roll call vote. There will be no separate discussion of these items unless members of the City Council, the public, or staff request specific items be removed from the Consent Calendar for separate action.

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

RECOMMENDED ACTION: That the City Council approve 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, NOVEMBER 1, 2016](#)**

RECOMMENDED ACTION: That the City Council approve the minutes.

**3. [YOUTH BOARD MEETING MINUTES, OCTOBER 20, 2016](#)**

RECOMMENDED ACTION: That the City Council receive and file.

**4. [MEETING CALENDAR / COMMUNITY SPECIAL EVENTS CALENDAR](#)**

RECOMMENDED ACTION: That the City Council receive and file.

**5. [CLAIMS AND DEMANDS](#)**

RECOMMENDED ACTION: That the City Council receive and file the Claims and Demands.

6. **RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE APPROVAL OF THE MEASURE M (M2) EXPENDITURE REPORT FOR FY2015-2016**

RECOMMENDED ACTION: That the City Council 1) adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING THE RENEWED MEASURE M (M2) EXPENDITURE REPORT FOR FISCAL YEAR 2015-2016; and

2) authorize the Mayor to sign the Resolution on behalf of the City; and 3) direct staff to submit the Resolution for the City of Dana Point to the Orange County Transportation Authority (OCTA) to maintain eligibility in the Measure M (M2) program.

7. **DOHENY VILLAGE PLAN UPDATE**

RECOMMENDED ACTION: That the City Council receive and file.

8. **DISPOSITION OF NON-ESSENTIAL CITY RECORDS**

RECOMMENDED ACTION: That the City Council approve the 2016 disposition on non-essential City records in accordance with California State law and the City's approved Records Retention Schedule and adopt a Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AUTHORIZING THE DISPOSITION OF CERTAIN INACTIVE CITY RECORDS AS PROVIDED BY SECTION 34090 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.

9. **MONTHLY FINANCIAL ACTIVITY REPORT, AUGUST 2016**

RECOMMENDED ACTION: That the City Council receive and file the Monthly Financial Activity Report for August 2016.

10. **PINES PARK ARBORIST REPORT**

RECOMMENDED ACTION: That the City Council receive and file the arborist's report on the status of the pine trees in Pines Park.

At this time, the City Clerk will read the title(s) of the ordinance(s) listed on the agenda.

**PUBLIC COMMENTS**

Any person wishing to address the City Council during the Public Comments section or on an Agenda item is asked to complete a "Request to Speak" form available on the table at the side of the Council Chamber. The completed form is to be submitted to the City Clerk prior to the Agenda item being called by the Mayor and prior to the individual being heard by the City Council.

In order to conduct a timely meeting, there will be a three-minute time limit per person and an overall time limit of fifteen minutes for this Public Comments portion of the agenda. At the Mayor's discretion, the balance of public comments will be heard after the New Business portion of the agenda. All comments are to be directed to the City Council and shall not consist of any personal attacks. Members of the public are expected to maintain a professional, courteous decorum during their comments. State law prohibits the City Council from taking action on a specific item unless it appears on the posted Agenda.

If anyone has handouts to distribute to the City Council, please follow proper procedure and hand them to the City Clerk. The City Clerk will see that they are distributed.

## **PUBLIC HEARINGS**

11. [SECOND READING AND ADOPTION BY REFERENCE THE CALIFORNIA CODES OF REGULATIONS TITLE 24, PARTS 1-12, KNOWN AND DESIGNATED AS THE 2016 EDITION OF THE CALIFORNIA BUILDING CODE, 2016 EDITION OF THE CALIFORNIA RESIDENTIAL CODE, 2016 EDITION OF THE CALIFORNIA ELECTRICAL CODE, 2016 EDITION OF THE CALIFORNIA PLUMBING CODE, 2016 EDITION OF THE CALIFORNIA MECHANICAL CODE, 2016 EDITION OF THE CALIFORNIA ADMINISTRATIVE CODE, 2016 EDITION OF THE CALIFORNIA REFERENCE STANDARDS CODE, 2016 EDITION OF THE CALIFORNIA ENERGY CODE, 2016 EDITION OF THE CALIFORNIA GREEN BUILDING STANDARDS CODE, 2016 EDITION OF THE CALIFORNIA HISTORICAL BUILDING CODE, 2016 EDITION OF THE CALIFORNIA EXISTING BUILDING CODE AND THE 2016 EDITION OF THE CALIFORNIA FIRE CODE, MAKING AMENDMENTS THERETO, AND RELATED ACTIONS](#)

RECOMMENDED ACTION: That the City Council close the Public Hearing, hold a second reading and adopt an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTERS 8.02, 8.03, 8.12, 8.14, 8.16, 8.20, 8.24, 8.26, 8.28, 8.30, 8.32, 8.34, 8.36 AND 8.38 OF TITLE 8 OF THE DANA POINT MUNICIPAL CODE ADOPTING BY REFERENCE THE CALIFORNIA CODES OF REGULATIONS TITLE 24, PARTS 1-12, KNOWN AND DESIGNATED AS THE 2016 EDITION OF THE CALIFORNIA BUILDING CODE, 2016 EDITION OF THE CALIFORNIA RESIDENTIAL CODE, 2016 EDITION OF THE CALIFORNIA ELECTRICAL CODE, 2016 EDITION OF THE CALIFORNIA PLUMBING CODE, 2016 EDITION OF THE CALIFORNIA MECHANICAL CODE, 2016 EDITION OF THE CALIFORNIA ADMINISTRATIVE CODE, 2016 EDITION OF THE CALIFORNIA REFERENCE STANDARDS CODE, 2016 EDITION OF THE CALIFORNIA ENERGY CODE, 2016 EDITION OF THE CALIFORNIA GREEN BUILDING STANDARDS CODE, 2016 EDITION OF THE CALIFORNIA HISTORICAL BUILDING CODE, 2016 EDITION OF THE CALIFORNIA EXISTING BUILDING CODE AND THE 2016 EDITION OF THE CALIFORNIA FIRE CODE, MAKING AMENDMENTS THERETO, AND RELATED ACTIONS.

12. [DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT ANNUAL REPORT AND RENEWAL FOR 2017](#)

RECOMMENDED ACTION: That the City Council 1) conduct a Public Hearing; and 2) adopt a Resolution entitled:

A RESOLUTION OF THE CITY OF DANA POINT, CALIFORNIA, CONFIRMING THE 2016 ANNUAL REPORT AND DECLARING THE INTENTION OF THE COUNCIL TO CONTINUE THE PROGRAM AND ASSESSMENTS FOR THE 2017 CALENDAR YEAR FOR THE DANA POINT TOURISM BUSINESS IMPROVEMENT DISTRICT (TBID).

## UNFINISHED BUSINESS

There are no Unfinished Business items.

## NEW BUSINESS

13. [HISTORIC PRESERVATION AGREEMENT \(MILLS ACT\) FOR THE PROPERTY LOCATED AT 34283 VIA LOPEZ](#)

RECOMMENDED ACTION: That the City Council authorize the Mayor to sign a Historic Property Preservation Agreement which would allow the property owners of the historic structure at 34283 Via Lopez to participate in the State's Mills Act Program.

14. [RATIFY THE ORIGINAL CONTRACT AGREEMENT AND APPROVE A CONTRACT AMENDMENT WITH TOM BISTLINE, INCORPORATED FOR ADDITIONAL AS-NEEDED REIMBURSABLE PUBLIC WORKS DEVELOPMENT WATER QUALITY INSPECTION SERVICES](#)

RECOMMENDED ACTION: That the City Council 1) ratify the original contract agreement dated August 18, 2015, and approve a contract amendment with Tom Bistline, Incorporated for additional as-needed reimbursable Public Works Water Quality Inspection Services and 2) authorize the City Manager or his Designee to execute the contract amendment.

15. [ADOPTION OF MEMORANDUM OF UNDERSTANDING \(MOU\) BETWEEN THE CITY OF DANA POINT AND THE DANA POINT EMPLOYEES ASSOCIATION \(DPEA\)](#)

RECOMMENDED ACTION: That the City Council approve the Memorandum of Understanding (MOU) between the City of Dana Point and the Dana Point Employees Association (DPEA), and authorize the Acting City Manager to sign the MOU.

16. [LETTER IN SUPPORT TO H.R. 6070, SAFE RECOVERY AND COMMUNITY EMPOWERMENT ACT](#)

RECOMMENDED ACTION: That the City Council authorize the Mayor to send a letter in support of H.R. 6070 on behalf of the City Council.

**17. APPROVAL OF BOTH A COOPERATIVE AGREEMENT C-6-1478 WITH THE ORANGE COUNTY TRANSPORTATION AUTHORITY FOR 2016 PROJECT "V" COMMUNITY-BASED TRANSIT/CIRCULATORS GRANT FUNDS AND A CONTRACT AMENDMENT WITH PROFESSIONAL PARKING, INCORPORATED FOR ADDITIONAL TROLLEY-SHUTTLE SERVICES**

RECOMMENDED ACTION: That the City Council 1) approve the attached Cooperative Agreement with the Orange County Transportation Authority (OCTA) authorizing the Mayor to sign the Agreement; 2) approve a First Amendment with Professional Parking, Incorporated for additional trolley and shuttles services and 3) authorize the City Manager to sign the First Amendment.

**18. QUALIFICATION OF REFERENDUM PETITIONS ON ORDINANCE NO. 16-06 AND ORDINANCE NO. 16-07 ALLOWING SHORT TERM RENTALS; DISCUSSION AND/OR ACTION PURSUANT TO ELECTIONS CODE § 9241**

RECOMMENDED ACTION:

That the City Council:

1. Accept the report from the Registrar of Voters on the signature verifications for two petitions entitled, "Referendum Against An Ordinance Passed By The City Council Ordinance No.16-06 and Referendum Against An Ordinance Passed By the City Council Ordinance No.16-07" (Action Document A).
2. Take one of the following three actions pursuant to Elections Code § 9241:
  - a. Reconsider and repeal Ordinances 16-06 and 16-07 adopted by City Council on September 6, 2016 (Action Document B); or
  - b. Submit Ordinances 16-06 and 16-07 to the voters at the next Regular Municipal Election on June 5, 2018; or
  - c. Submit Ordinances 16-06 and 16-07 to the voters at a Special Municipal Election prior to the June 5, 2018 General Municipal Election and adopt a Resolution (Action Document C) calling the Special Municipal Election entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, ORDERING, CALLING, PROVIDING FOR AND GIVING NOTICE OF A SPECIAL MUNICIPAL ELECTION TO BE HELD ON \_\_\_\_\_ FOR THE SUBMISSION TO THE VOTERS TWO QUESTIONS ALLOWING SHORT TERM RENTALS.

If the Council takes action to call for an election, consider taking the following actions (all of which are optional, and at the Council's discretion):

- Adopt a motion directing the City Attorney to prepare an impartial analysis.

- Adopt a motion calling for the City Council to submit an argument in opposition to the Referendum petitions, and giving related direction to staff regarding how to proceed.
- Adopt Action Document D, a Resolution rescinding a previously adopted Resolution by which rebuttal arguments would not be permitted entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, RESCINDING RESOLUTION 15-12-01-03 THAT ADOPTED THE PROVISIONS OF ELECTIONS CODE SECTION 9285(a).

If the Council takes action to call for a Special Municipal Election, adopt a motion by which to appropriate \$128,500 from General Fund Unassigned Reserve to the City Clerk Professional Services account (31-2230) for election services and \$16,605.60 for signature verification (\$3.40 per signature) through the Registrar of Voters.

## **PUBLIC COMMENTS (Continued)**

## **STAFF REPORTS**

(Acting City Manager Michael Killebrew)

(City Attorney Patrick Muñoz)

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

The City Council may discuss, act upon or seek consensus on matters described under Council Reports only if: They are agendized with a complete written report included; or, if an item arose subsequent to the posting of the agenda and the Council determines that an emergency exists. Non-agendized items may be presented as informational only.

## **ADJOURNMENT**

The next Regular Meeting of the City Council will be December 6, 2016, at 5:00 p.m. in the City Council Chamber located at 33282 Golden Lantern, Suite 210, Dana Point, California.

## **CERTIFICATION**

I, Kathy M. Ward, City Clerk of the City of Dana Point, do hereby certify that a copy of the foregoing Agenda was posted at Dana Point City Hall, the Dana Point Post Office, the Capistrano Beach Post Office and the Dana Point Library by Thursday, December 1, 2016, at 5:30 p.m.

\_\_\_\_\_  
KATHY M. WARD, CITY CLERK

\_\_\_\_\_  
DATE

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PURSUANT TO THE AMERICANS WITH DISABILITIES ACT, PERSONS WITH A DISABILITY WHO REQUIRE A DISABILITY-RELATED MODIFICATION OR ACCOMMODATION IN ORDER TO PARTICIPATE IN A MEETING, INCLUDING AUXILIARY AIDS OR SERVICES, MAY REQUEST SUCH MODIFICATION OR ACCOMMODATION FROM THE CITY CLERK AT (949) 248-3500 (TELEPHONE) OR (949) 248-9920 (FACSIMILE). NOTIFICATION 48 HOURS PRIOR TO THE MEETING WILL ENABLE THE CITY TO MAKE REASONABLE ARRANGEMENTS TO ASSURE ACCESSIBILITY TO THE MEETING.