

# CITY OF SAN CLEMENTE

## City Council Minutes

### Regular City Council Meeting – February 17, 2015

*These minutes reflect the order in which items appeared on the meeting agenda and do not necessarily reflect the order in which items were actually considered.*

A Regular Meeting of the San Clemente City Council was called to order on February 17, 2015 at 5:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Hamm.

**PRESENT** BAKER, BROWN\*, DONCHAK, WARD, MAYOR HAMM  
\*Arrived at 5:10 p.m.

**ABSENT** NONE.

**STAFF PRESENT** James Makshanoff, City Manager; Jeff Oderman, City Legal Counsel; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk

### **CLOSED SESSION**

MOTION BY MAYOR PRO TEM BAKER, SECOND BY MAYOR HAMM, CARRIED 4-0 (COUNCILMEMBER BROWN ABSENT), to recess to Closed Session at 5:00 p.m. to discuss the following:

- A. PUBLIC EMPLOYEE APPOINTMENT, pursuant to Government Code Section 54957(b)(1):

Title: City Attorney

- B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR, pursuant to Government Code Section 54956.8:

Property: Vista Hermosa Sports Park, 987 Avenida Vista Hermosa, San Clemente

Agency Negotiator: James Makshanoff, City Manager

Negotiating Parties: City of San Clemente and SC Surf LLC.

Under Negotiation: Price and terms of payment

- C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):

Joseph A. Arriola vs. L.H.C. Investments LLC, et al (OCSC Case No. 30-2011-00450299-CU-CD-CXC)

- D. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):

Emergency Shelter Coalition v. City of San Clemente., OCSC Case No. 30-2014-00758880-CU-WM-CJC.

- E. Capistrano Shores, Inc. v. City of San Clemente:

1. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):

Capistrano Shores Inc. v. City of San Clemente (OCSC No. 30-2014-00708545-CU-WM-CXC)

2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):

Capistrano Shores Inc. v. City of San Clemente (OCSC No. 30-2014-00709987-CU-EI-CXC)

3. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):

Capistrano Shores Inc. v. City of San Clemente (OCSC No. 30-2014-00726889)

- F. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) of subdivision (d), and (3) of subdivision (e) of Section 54956.9: (One case)

The “existing facts and circumstances” of the threat under both (d)(2) and (e)(3) are provided by the written communication (email print out) of Brad Malamud dated February 11, 2015 which is made a part of this record pursuant to Government Code Section 54957.5.

In attendance for the full Closed Session were all members of the City Council (Councilmember Brown arrived at 5:10 p.m.), City Manager Makshanoff, Assistant City Manager Sund and City Clerk Baade. Legal Counsel Oderman was present for all items except Item F. Attorney Alan Burns was in attendance for Item F only. Ed Richards (from Kutak Rock), Paul Zeglovitch (from California Joint Powers Insurance Authority (CJPIA),

and Public Works Director/City Engineer Cameron were in attendance for Closed Session Item C only.

**MEETING RECONVENED**

Council reconvened at 6:13 p.m., with all members present.

**INVOCATION**

Pastor Chris Smith, Southcoast Church International, gave the invocation.

**PLEDGE OF ALLEGIANCE**

Mayor Hamm led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

**A. San Clemente High School Update**

San Clemente High School students McKenna Brownell and Daniel Klevit narrated a PowerPoint presentation concerning campus activities. A hard copy of the presentation is on file in the City Clerk Department.

**B. Orange County Fire Authority Ambulance Transport**

Orange County Fire Authority Division Chief Wells narrated a PowerPoint concerning ambulance transport. A hard copy of the presentation is on file in the City Clerk Department.

**C. Orange County Human Relations Commission**

Francisco Marmalejo, board member with the Orange County Human Relations Commission, provided an update on Orange County Human Relations services and activities throughout the County and distributed a copy of its 2013-14 Annual Report. A hard copy of the Annual Report is on file in the City Clerk Department.

2. **ORAL COMMUNICATIONS (PART 1)**

**La Pata Vista Hermosa Sports Park**

Anthony LaFrano, San Clemente, opined that political changes have occurred and speculated that the current Council would not have approved a wave pool or alcohol sales at the Sports Park.

**Capistrano Unified School District – Introduction of New Superintendent**

Kirsten Vital, Superintendent of Capistrano Unified School District, introduced herself to Council and stated she is excited to be a resident of San Clemente and Superintendent of the Capistrano Unified School District; summarized her background.

**Brown Act – Alleged Violation**

Brad Malamud, San Clemente, stated that he never intended to sue the City concerning his opinion that Council violated the Brown Act by discussing appointment of the City Attorney in Closed Session; opined that the City takes non-transparent positions even though the City's website says that the City is transparent.

**Trees in The Reserve**

Eva O'Keefe, San Clemente, stated the City has fined The Reserve for improper tree trimming and missing trees; opined that many trees are now overgrown which creates a fire hazard for homes in the neighborhood.

Don DiFillippo, San Clemente, addressed the importance of preserving views in order to maintain property values; stated the view at his residence has diminished because of overgrown trees.

Laurie Massatto, San Clemente, noted that there are legal issues that need to be researched in the CC&R's and stated there is no proof that the Association removed 1,600 trees as the City claims; suggested the developer never installed the trees and pointed out that the City signed off on the development as-built.

Marissa Padilla Williams, San Clemente, stated she has safety concerns with the trees (specifically the pine trees) in The Reserve because of the high fire danger in the area; requested that Council allow the trees to be trimmed.

**Community Center (Broken Tables)**

Carol Wilson, Capistrano Beach, commented that she rented space at the Community Center; voiced concern that several of the tables were broken and requested that Council ensure that the tables are repaired or replaced.



**Noble Path Foundation – Importance of Youth Nutrition and Exercise**

Rob Kotz, San Clemente, President of The Noble Path Foundation, invited Council and the public to attend the High 5 4 Fitness event on March 7, 2015 at San Clemente High School, which teaches youth about the importance of nutrition and exercise.

**San Clemente Green – Swedish Family’s Expedition to Bring Awareness to Climate Change**

Gary Headrick, San Clemente, shared photos of a Swedish family that is undertaking a four-year world-wide expedition to bring awareness to the topic of climate change; noted that the family will be available to meet with schools and community groups when it returns to San Clemente.

3. MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM BAKER, CARRIED 5-0, to waive reading in full of all Resolutions and Ordinances.

4. **CONSIDERATION OF AGENDIZING ITEMS REQUIRING IMMEDIATE ACTION**

None.

5. **CLOSED SESSION REPORT - CITY ATTORNEY**

With regard to Closed Session Item F, Attorney Alan Burns reported that Council met in Closed Session with regard to Brad Malamud’s demand to cure and correct an alleged Brown Act violation; stated that Council complied with the law and hence there is nothing to cure and correct.

With regard to the remaining items in Closed Session, City Legal Counsel Oderman reported that Council took no reportable actions on Items A, B and C; noted that Council will recess back to Closed Session at the end of this evening’s business meeting to discuss Items D and E.

6. **CONSENT CALENDAR**

MOTION BY MAYOR PRO TEM BAKER, SECOND BY COUNCILMEMBER BROWN, CARRIED 5-0, to approve the Consent Calendar, with the removal of Items 6B(1), 6-D, 6-E and 6-G.

A. **City Council Minutes**

MOTION BY MAYOR PRO TEM BAKER, SECOND BY COUNCILMEMBER BROWN, CARRIED 5-0, to approve the minutes of the Regular City Council meeting of February 3, 2015.

B. MOTION BY MAYOR PRO TEM BAKER, SECOND BY COUNCILMEMBER BROWN, CARRIED 5-0, to receive and file the following:

(2) Minutes of the Regular Study Session of the Planning Commission meeting of February 4, 2015.

(3) Minutes of the Regular Planning Commission meeting of February 4, 2015.

C. **Warrant Register**

MOTION BY MAYOR PRO TEM BAKER, SECOND BY COUNCILMEMBER BROWN, CARRIED 5-0, to approve:

Handwrite No. 521928, paid on 1/27/15,  
Wire Transfers No. 1353 through  
1354, paid on 1/30/15, and Warrant Nos.  
521929 through 522060, paid on 1/30/15,  
in the amount of.....\$1,259,018.51

Handwrite No. 522061 through 522096,  
paid on 2/5/15, Wire Transfers No. 1355 through  
1358, paid on 2/6/15, and Warrant Nos.  
522097 through 522211, paid on 2/6/15,  
in the amount of.....\$1,594,281.17

TOTAL WARRANT REGISTER.....\$2,853,299.68

**Payroll Register**

MOTION BY MAYOR PRO TEM BAKER, SECOND BY COUNCILMEMBER BROWN, CARRIED 5-0, to approve:

Warrant Nos. 357 through 360 and Automatic Deposit Advises 21681 through 21973 for the period 1/19/15 through 2/1/15, paid on 2/6/15, in the amount of.....\$ 415,766.33

TOTAL PAYROLL REGISTER.....\$ 415,766.33

F. **City Pass Options for Employees with Twenty-Five Years or More of Full-time or Part-time Benefited City of San Clemente Service and Outgoing Councilmembers**

MOTION BY MAYOR PRO TEM BAKER, SECOND BY COUNCILMEMBER BROWN, CARRIED 5-0, to approve, and authorize the Mayor to execute, Policy and Procedure 1203-1 (City-Issued Swim, Parking or Golf Pass for Designated Retirees and Council Members), effective February 1, 2015. This revised policy will add two additional options, i.e., a non-transferable swim pass and a non-transferable parking pass, to the current golf pass option.

**ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION**

6B(1) **Minutes of the Regular Zoning Administrator Meeting of February 4, 2015**

Following discussion, MOTION BY MAYOR PRO TEM BAKER, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 5-0, to receive and file the minutes of the Regular Zoning Administrator Meeting of February 4, 2015.

D. **Parking Prohibition – Avenida Vaquero Street Rehabilitation**

Brenda Miller, San Clemente, spoke in support of staff’s recommendation and stated safety is of the utmost importance.

Pete Van Nuys, San Clemente, stated that he has received positive comments from bicyclists who appreciate the street striping on Avenida Vaquero; expressed safety concerns due to the high rate of vehicular speed on Vaquero; urged Council to vote in support of staff’s recommendation.

Michael Metcalf, San Clemente, spoke in support of the proposed parking prohibition; urged Council to vote in support of staff's recommendation.

Transportation Engineering Manager Frank responded to Council inquiries.

MOTION BY MAYOR PRO TEM BAKER, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to:

1. Approve prohibiting parking on Avenida Vaquero as shown on the location map provided in Attachment 3 of the Administrative Report, dated February 17, 2015, and on file with the City Clerk.
2. Adopt Resolution No. 15-04 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MASTER TRAFFIC RESOLUTION NO. 1846, ESTABLISHING 'NO PARKING AREAS' ON AVENIDA VAQUERO.

**E. Contract Award – El Portal Beach Access Rehabilitation**

Park Planner Donnelly responded to Council inquires, noting that the handrails will be constructed with corrosion-resistant anodized aluminum (not steel as indicated in the administrative report).

Council requested an update on the amount that will remain in the General Fund unassigned balance after the deductions authorized this evening are implemented.

MOTION BY MAYOR PRO TEM BAKER, SECOND BY MAYOR HAMM, CARRIED 5-0, to:

1. Approve plans and specifications for the El Portal Beach Access Rehabilitation, Project No. 23101.
2. Approve, and authorize the Mayor to execute, Contract C15-10 by and between the City of San Clemente and Wright Construction Engineering Corporation, providing for the construction of the El Portal Beach Access Rehabilitation, in the amount of \$795,150.
3. Approve, and authorize the Mayor to execute, Amendment No. 1 to Contract C13-36, by and between the City of San Clemente and Noble Consultants, Inc., providing for construction period design services. This amendment modifies the contract cost from \$177,834 to \$231,334, an increase of \$53,500.
4. Approve an appropriation of \$136,000 from the General Fund to Account 001-636-45700-000-23101 for the El Portal Beach Access Rehabilitation, Project No. 23101.

G. **Contract Amendment – Beach Trail Crossing Safety Enhancements**

Assistant City Engineer Bonigut responded to Council inquiries and provided an update on the Safety/Quiet Zone.

MOTION BY MAYOR PRO TEM BAKER, SECOND BY COUNCILMEMBER BROWN, CARRIED 5-0, to approve Amendment No. 2 to Agreement No C-3-1528, by and between the Orange County Transportation Authority (OCTA) and the City of San Clemente, providing for Beach Trail Crossing Safety Enhancements and Audible Warning System.

**MEETING RECESSED**

Council recessed at 7:43 p.m., and reconvened at 7:53 p.m., with all members present.

7. **PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **Contract Award – Conversion of Non-Functional Turf Removal and Irrigations Retrofit for Water Conservation**

Report from the Public Works Director/City Engineer concerning a contract award for the conversion of non-functional turf removal and irrigations retrofit for water conservation.

Assistant City Engineer Rebensdorf reviewed the contents of the Administrative Report and responded to Council inquiries.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BROWN, CARRIED 5-0, to:

1. Approve the plans and specifications for the Conversion of Non-Functional Turf Removal and Irrigation Retrofit for Water Conservation, Project No. 15104.
2. Approve an appropriation in the amount of \$525,100 from the General Fund Unassigned Balance to Account 001-635-45700-000-15104.
3. Budget Grant Revenues of \$469,728 to Account 058-000-33490 (Grant Revenues).
4. Approve, and authorize the Mayor to execute, Contract C15-11, by and between the City of San Clemente and Marina Still Growing, providing for the conversion of Non-Functional Turf Removal and Irrigation Retrofit for Water Conservation, in the amount of \$387,937.74.

**B. Contract Award – City Attorney Services**

Report from the City Manager concerning a contract award for City Attorney Services.

City Legal Counsel Oderman noted that he, and his law firm Rutan & Tucker, have a financial interest in this issue; left the Chambers at 7:59 p.m.

Brad Malamud, San Clemente, stated that the City of San Clemente should not be charged more than the hourly rate paid by other cities represented by the same law firm; requested a 'most favored nations' clause be added to the contract; suggested the City retain a separate law firm to manage the City's litigation.

Assistant City Manager Sund reviewed the contents of the Administrative Report and responded to Council inquiries.

Council requested that the City's zip code be corrected on the contract and requested to receive a timeline which specifically outlines the transition plan and schedule.

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR HAMM, CARRIED 5-0, to approve, and authorize the Mayor to execute, Contract C15-12, with Scott Smith to serve as City Attorney, and Matthew Richardson to serve as Assistant City Attorney, with the law firm of Best, Best and Krieger, effective March 1, 2015.

City Legal Counsel Oderman returned to the Chambers at 8:15 p.m.

Council expressed appreciation to Jeff Oderman and Rutan & Tucker for 32 years of high-quality service to the City of San Clemente.

10. **ORAL COMMUNICATIONS (PART 2)**

None.

11. **REPORTS**

A. **Commissions and Committees**

(1) **Establishment of Date(s) for Council to Meet in Joint Session with City Commissions and Committees and Possibility of Cancelling a Meeting in August**

Council took action as follows:

1. Scheduled a joint Council/Commissions/Committees meeting to be held on March 31, 2015 and requested an item be added to the agenda concerning best practices for Commission/Committee members.
2. Cancelled the Regular City Council meeting of July 21, 2015.

B. **City Manager**

None.

C. **City Attorney**

City Legal Counsel Oderman thanked staff and Council for their support during his 32 years of service to the City; commended the City's leadership and wished the City well in the future.

D. Councilmembers

**(1) Update on Status of the Potential Closure of the San Clemente Campus of Saddleback Memorial Hospital**

City Manager Makshanoff noted that Staff continues to meet with hospital staff, Supervisor Bates and Assemblyman Brough with regard to a possible legislative solution to the freestanding emergency room issue; reported that additional community meetings are not anticipated at this time; noted that staff is moving forward on various initiatives and pointed out that some cities have adopted resolutions supporting the hospital's retention and other cities are contemplating taking similar actions.

Tony Struthers, Administrator of San Clemente Hospital, stated the proposed state-of-the-art urgent care facility will allow local residents to receive quality care without the need to leave San Clemente; commented that Saddleback Memorial remains cautiously optimistic about legislative options that will facilitate freestanding emergency rooms.

Carol Wilson, Capistrano Beach, thanked Council for its involvement and expressed appreciation for the time and effort given to this issue; suggested the leadership at Saddleback Memorial Care is not listening to the needs of the community; requested that Council look into other options for emergency care in the event the hospital closes.

Brennan James, Laguna Niguel, read a letter from Jim Kobayashi, which conveyed support for a new state-of-the-art medical pavilion in San Clemente. A hard copy of the subject letter is on file in the City Clerk Department.

Pete Curran, San Clemente, suggested that data provided by Saddleback Memorial Care fail to provide a complete picture of ambulance transports to San Clemente Hospital; opined that the statistics differ from those provided by the Orange County Fire Authority.

Dr. Gus Gialamus, representing the Save Our Hospital Foundation, presented Council with a petition containing 6,000 signatures from individuals who support Save Our Hospital's efforts; opined that the lack of an emergency room will increase the mortality rate of the senior population; stated that Ware Malcomb has donated \$250,000 to undertake an engineering and architectural feasibility study for a smaller hospital; hard copies of the conceptual drawings are on file in the City Clerk Department.



Warren Vidrine, San Clemente, suggested that Memorial Care has used faulty facts which have led to faulty conclusions; stated he spoke with several people in the community who expressed disbelief that the closure of the hospital was a possibility.

Dolores Padgett, San Clemente, stated the statistics provided by the Orange County Fire Authority prove that the City must have its own hospital and emergency room.

Wayne Brown, South Orange County Economic Coalition, spoke in support of pursuing legislation to facilitate a free-standing emergency room, while simultaneously embracing the urgent care proposal.

Karen Sharp, Director of Emergency Services at San Clemente Hospital, provided an update on outreach efforts to the community, noting that some concerns can be alleviated by providing facts; stated that stroke and heart attack victims should call 911 so that they are transported directly to a specialized stroke or cardiac receiving center; suggested that the closure of the hospital would not affect lifesaving interventions.

Roger Jolicoeur, San Clemente, opined the senior community is concerned about the potential closure of the hospital.

### **Mobile Hub Library Grand Opening**

Councilmember Donchak invited residents to attend the grand opening of the Mobile Hub Library which is scheduled to take place at noon on February 20, 2015; reported that the book mobile will be open from 12:00 – 5:00 p.m. Wednesday through Saturday until the Library project is complete.

### **San Clemente Hospital**

Mayor Pro Tem Baker thanked the community for their activism on the San Clemente Hospital issue; encouraged Saddleback Hospital to continue to engage the community.

### **El Camino Real Parking Lot**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 5-0, to agendize the El Camino Real Parking Lot for the March 3, 2015 Council meeting, and to request that the Coastal Commission delay consideration of this issue.

**12. RESOLUTIONS/ORDINANCES****A. Ordinance No. 1592 (Second Reading) - Issuance of Utility Annual Encroachment Permits**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 5-0, to adopt Ordinance No. 1592 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING SECTION 12.20 OF THE SAN CLEMENTE MUNICIPAL CODE TO INCLUDE A NEW SUBSECTION 12.20.025 TO ALLOW ISSUANCE OF UTILITY ANNUAL ENCROACHMENT PERMITS.

**RECESS TO CLOSED SESSION**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR HAMM, CARRIED 5-0, to recess to Closed Session at 8:53 p.m. to discuss the following items that appeared on the Closed Session Agenda:

**D. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):**

Emergency Shelter Coalition v. City of San Clemente, OCSC Case No. 30-2014-00758880-CU-WM-CJC.

**E. Capistrano Shores, Inc. v. City of San Clemente:****1. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):**

Capistrano Shores Inc. v. City of San Clemente (OCSC No. 30-201400708545-CU-WM-CXC)

**2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):**

Capistrano Shores Inc. v. City of San Clemente (OCSC No. 30-2014-00709987-CU-EI-CXC)

**3. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):**

Capistrano Shores Inc. v. City of San Clemente (OCSC No. 30-2014-00726889)

In attendance for this portion of the Closed Session were all members of the City Council, City Manager Makshanoff, Assistant City Manager Sund, Legal Counsel Oderman, and City Clerk Baade. Building Official Jorgensen was in attendance for Item E only.

### **MEETING RECONVENED**

Council reconvened at 9:34 p.m., with all members present.

### **CLOSED SESSION REPORT**

City Legal Counsel Oderman stated that no reportable actions were taken during the Closed Session.

### 13. **ADJOURNMENT**

MOTION BY MAYOR HAMM, SECOND BY MAYOR PRO TEM BAKER, CARRIED 5-0, to adjourn in honor of Jeff Oderman at 9:24 p.m. The next Regular Council Meeting will be held on March 3, 2015 in the Council Chambers, located at 100 Avenida Presidio, San Clemente. Closed Session items will be considered at 5:00 p.m. The Regular Business Meeting will commence at 6:00 p.m.

A subsequent Adjourned Regular Council meeting will be held on March 4, 2015 at 4:00 p.m. to consider the Long Term Financial Plan, Quarterly Report and Mid-Year Budget Adjustments.



CITY CLERK of the City of  
San Clemente, California

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MAYOR of the City of  
San Clemente, California