

CITY OF SAN CLEMENTE

City Council Minutes

Special and Regular City Council Meeting – December 15, 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 Special and Regular Meeting of the San Clemente City Council was called to order on December 15, 2015 at 4:30 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Baker.

PRESENT BROWN, DONCHAK, WARD, MAYOR BAKER (*Note: Councilmember Hamm was not present at the meeting but participated in a portion of the Closed Session via teleconference*).

ABSENT HAMM (except that he participated in a portion of the Closed Session via teleconference).

STAFF PRESENT James Makshanoff, City Manager; Scott Smith, City Attorney; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk

4:15 P.M. – INTERVIEWS/SELECTION OF CITY REPRESENTATIVE TO THE ORANGE COUNTY MOSQUITO AND VECTOR CONTROL DISTRICT

Council interviewed the following applicant for the position of City representative to the Orange County Mosquito and Vector Control District:

Jim Dahl.

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT) to appoint Jim Dahl to represent the City on the Orange County Mosquito and Vector Control District Board of Trustees, for a two-year term.

CLOSED SESSION

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR BAKER, CARRIED 4-0 (COUNCILMEMBER HAMM WAS ABSENT DURING THE MOTION TO RECESS TO CLOSED SESSION BUT PARTICIPATED IN A PORTION OF THE CLOSED SESSION DELIBERATIONS VIA TELECONFERENCE), to recess to Closed Session at 4:30 p.m. to discuss the following:

- A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Pursuant to Government Code Section 54956.8
Property: 1030 Calle Negocio
Agency Negotiator: Assistant City Manager
Negotiating Party: Family Assistance Ministries
Under Negotiation: Term and Rent for Possible Lease Extension
- B. CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION**
Pursuant to Government Code Section 54956.9(d)(1)
Case Name: Emergency Shelter Coalition v. City of San Clemente
Case Number: OCSC 30-2014-00758880
- C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to Government Code Section 54956.9(d)(1)
Case Name: Capistrano Shores, Inc. v. City of San Clemente
Case Numbers: OC SC 30-2014-00709987-CU-EI-CXC and 30-2014-00726889-CU-WM-CJC
- D. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Pursuant to Government Code Section 54956.8
Property: 2.8 acre San Mateo site north of Calle Bahia, adjacent to the Golf Course site
APN(s): 060-010-37, 060-010-38
Agency Negotiator: Assistant City Manager
Negotiating Party: San Diego Gas and Electric Company
Under Negotiation: Price and Terms of Payment
- E. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
Pursuant to Government Code Section 54956.9(d)(1)
Case Name: City of San Clemente v Eric Olson
Case Number: 30-2015-00811144
- F. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Initiation of litigation pursuant to Government Code section 54956.9(d)(4)
Number of potential cases: 1

Closed Session items continued on following page

G. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)

Number of potential cases: 2

In attendance for the full Closed Session were all members of the City Council (Councilmember Hamm participated in Closed Session via teleconference), City Manager Makshanoff, Assistant City Manager Sund, and City Attorney Smith. Community Development Director Gallardo-Daly was in attendance for Items C and E, Deputy Public Works Director Bonigut was in attendance for Item F, and Attorney Richards, Public Works Director/City Engineer Cameron and Deputy Public Works Director Rebensdorf were in attendance for one of the two potential litigation cases on Item G.

MEETING RECONVENED

Council reconvened at 6:06 p.m., with all members present, except Councilmember Hamm.

INVOCATION

Councilmember Brown gave the invocation.

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Ward led the Pledge of Allegiance.

1. SPECIAL PRESENTATIONS

A. Holiday Serenade – Marblehead Elementary 5th Grade Choir

Students from the Marblehead Elementary 5th Grade Choir performed a holiday serenade, under the direction of Ms. Peterson.

B. San Clemente High School Update

San Clemente High School students McKenna Brownell and Daniel Klevit narrated a PowerPoint presentation entitled “SCHS Fall 2015” concerning school activities. A hard copy of the presentation is on file with the City Clerk.

C. Remote Observation System (ROS)

Greg Hulsizer and Carter Mudge of the San Clemente Lifeguard and Junior Guard Foundation, presented the City with a Remote Observation System (ROS) and displayed a video featuring the device.

D. **City Fiscal Reports**

Assistant City Manager Sund and Finance Manager Vincent narrated a Power Point Presentation entitled “Fiscal State of the City” concerning the Fiscal State of the City for the period ending June 30, 2015, Fiscal Year (FY) 2015 4th Quarter Financial Report, and FY 2016 1st Quarter Financial Report. A hard copy of the presentation is on file with the City Clerk.

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

Additional Parking Spaces at the Library

John Tengdin, San Clemente, suggested that the City add 50 new beach parking spaces at the San Clemente Library; reviewed his proposal for demolition of the shuffleboard court, regrading and restriping of the property; stated that beach parking could be provided at a lesser cost at the library than closer to the beach.

Council noted that the library has been open for four months and requested a report that addresses whether any operational or parking related issues have been encountered.

Santa Margarita Water District

Jim Leach, Santa Margarita Water District, reported that notices of the District's rate restructuring were mailed last month to Talega customers; noted that the purpose of the restructuring is to ensure that fixed water rates are recovered fairly and equitably from water customers; reviewed events at which interested individuals can learn more about the water structure.

Short Term Vacation Rentals

Lauren Cramer, San Clemente, reported that she lives next to two vacation rentals; urged Council to prohibit vacation rentals, noting that short-term rentals create noise nuisances and promote crime.

Jilinda Den Dulk, San Clemente, spoke in support of short-term rentals; noted that a small percentage of vacation rentals in San Clemente generate complaints; opined that placing a moratorium on short-term rentals violates property owner rights.

Erica Snyder, San Clemente, read a letter on behalf of her father, Harry Snyder. Mr. Snyder's letter noted as follows: 1) He retains a professional rental company to rent his vacation home and screen applicants; 2) Most of his renters are families and many are in town to attend weddings at the Ole Hanson Beach Club and Casino; 3) He has never received a complaint about his renters; 4) He keeps his property in excellent condition to attract renters.

Eric Olson, San Clemente, asserted that homeowners have a right to rent their properties; suggested that residents who make frivolous police calls should be fined; suggested that people should investigate neighborhoods before purchasing properties.

Bradley Den Dulk, San Clemente, urged Council to consider a positive, common sense approach for short-term vacation rentals; asserted that vacation rentals are part of San Clemente's culture and suggested that it would be unfair to change the rules at this point in time.

Tricia Mading, San Clemente, urged Council to ban vacation rentals for durations shorter than 30 days.

Cannabis (Marijuana)

Kessler Ambrusto, San Clemente, urged Council to form a drug abuse and marijuana task force rather than prohibiting marijuana; stated a prohibition will not stop the use of marijuana in San Clemente.

North Beach Art District

Don Slater, San Clemente, reported on the formation of the North Beach Art District; requested that a trolley route be established in the Los Molinos area to help promote the art district.

Councilmember Brown left the Council Chambers at 7:24 p.m.

3. MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 3-0 (COUNCILMEMBER BROWN AND COUNCILMEMBER HAMM ABSENT), 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**

City Attorney Smith announced that Council took no reportable action during Closed Session, but pointed out that Council did not finish its discussions; stated that Council will recess back to Closed Session at the conclusion of this evening's business meeting to resume deliberations.

Councilmember Brown returned to the dais at 7:26 p.m.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve the Consent Calendar, with the removal of Items D, F, J, K and L.

A. **City Council Minutes**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve the following:

- 1. Minutes of the Regular City Council Meeting of November 17, 2015.

B. **Commission/Committee Minutes**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to receive and file:

- 1. Minutes of the Adjourned Regular Beaches, Parks and Recreation Commission Meeting of November 11, 2015.
- 2. Minutes of the Regular Zoning Administrator Meeting of December 2, 2015.
- 3. Minutes of the Adjourned Regular Planning Commission Meeting of December 2, 2015.

C. **Warrant Register**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve:

Wire Transfer Nos. 1455 through 1460
 and Warrant Nos. 529138 through 529296
 paid on 11/27/2015, in the amount of \$3,423,680.70

Warrant Nos. 529297 through 529415
 paid on 12/4/2015, in the amount of \$2,063,966.91

TOTAL WARRANT REGISTER\$5,487,647.61

Payroll Register

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve:

Warrant Nos. 448 through 452 and
Automatic Deposit Advises 28537 through
28854 for the period of 11/9/2015 through
11/22/2015, paid on 11/27/2015,
in the amount of \$412,764.92

TOTAL PAYROLL REGISTER \$412,764.92

E. **Contract Award – City-Wide Janitorial Services**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Approve, and authorize the Mayor to execute, Contract C15-78, by and between the City of San Clemente and Omni Enterprise, DBA Omni Clean, providing for City-Wide Janitorial Services, in an amount of \$142,296 per fiscal year through FY 2017-18.
2. Approve the letter from Omni Enterprise, listed as Attachment 1 to the Administrative Report, dated December 15, 2015, to waive the bid irregularity for a mathematical error.

G. **Notice of Completion – Traffic Signal Systems Upgrade, Avenida Vista Hermosa and Camino De Los Mares**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Accept the Traffic Signal Systems Upgrade Project for Avenida Vista Hermosa and Camino De Los Mares, Project Nos.13318 and 13319, from the contractor, Crosstown Electrical & Data, Inc.
2. Approve, and authorize the Mayor to execute and the City Clerk to record, the Notice of Completion for the Traffic Signal Systems Upgrade Project for Avenida Vista Hermosa and Camino De Los Mares.

Motion continued on following page

3. Authorize the City Clerk to release the Payment Bond 35 days from the recordation of the Notice of Completion upon verification with the Engineering Division that no liens have been levied against the contractor, Crosstown Electrical & Data, Inc.
4. Authorize the City Clerk to release the Performance Bond upon receipt of a Warranty Bond in the amount of 25% of the construction cost.

H. **Consideration of Name Change – Marblehead Inland Park to Marblehead Park**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to adopt Resolution No. 15-56 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, CHANGING THE NAME MARBLEHEAD INLAND PARK TO MARBLEHEAD PARK.

I. **Proposed Fencing – Bonito Canyon Park for the Boys and Girls Club**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Approve the proposed vinyl blue chain link fencing and proposed weekday hours at Bonito Canyon Park for the exclusive use of the Boys and Girls Club.
2. Approve a transfer in the General Fund in the amount of \$16,000 from the City Council Contingency account to Account 001-624-43890 for upgraded vinyl blue chain link fencing at Bonito Canyon Park.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

D. **Contract Award – Pier Structural Construction Assessment and Design**

Senior Civil Engineer Ilkhanipour responded to Council, noting that the pier will remain open during construction via the use of temporary, ADA accessible foot bridges; noted the bridges will also be usable by lifeguard vehicles, if needed.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve, and authorize the Mayor to execute, Contract C15-77, by and between the City of San Clemente and TransSystems, providing for condition assessment, engineering and design services for pier improvements, in the amount of \$138,134.

F. **Records Destruction**

Alexander Maniscalco, representing Capistrano Shores, requested that Council not destroy records that could potentially include evidence relative to the Capistrano Shores lawsuit; identified the records that he would like retained.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BROWN, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT) to adopt Resolution No. 15-55 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE DESTRUCTION OF CERTAIN CITY RECORDS AS PROVIDED BY SECTION 34090 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA, with the direction that the below items not be destroyed:

<u>File</u>	<u>Description</u>	<u>Date Range</u>
101-1-33	Planning Commission Applications/Resignations	2005-2007
N/A	Public Records Requests	2007-2008
N/A	Public Records Requests	2011-2013
103-7-52	City Council Agendas	2012
103-7-53	City Council Agendas	2012
103-7-54	City Council Agendas	2013
N/A	DVDs of City Council Meetings	2004-2008

J. **Fee Waiver – National Association of People Against Bullying**

Victoria Mendez, and Kelsey Murphy, San Clemente High School, summarized the purpose of the National Association of People Against Bullying organization and Cool2bKind campaign; noted that the San Clemente High School dance on February 6, 2016 is intended to raise awareness of bullying; requested that the City approve the fee waiver for the venue and fund the required event security.

In response to Council inquiry, City Manager Makshanoff agreed to work with the Orange County Sheriff's Department with respect to possible volunteer security personnel and/or a partial or total fee waiver for security guards.

MOTION BY MAYOR BAKER, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve a fee waiver in an amount not to exceed \$1,037.50 for use of the Community Center auditorium, kitchen, and Ole Hanson Fireside Room, for the Cool2bKind dance on February 6, 2016.

K. **Amendment to Policy and Procedure 702-4 - Park Usage**

Recreation Manager Passow proposed that Council add the word “permit” to Policy Section 5.3.1.3.3 to read “*sound permit may be requested*” and responded to Council inquiries.

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve a modification to Policy and Procedure 702-4 (Max Berg Plaza Park Usage) to include all San Clemente parks, with the understanding that Section 5.3.1.3.3 be modified to read as follows: “*Category three amplified sound permit may be requested.*”

L. **City Investment Policy 202-1**

City Treasurer Taylor responded to Council inquiries concerning the importance of Industry Specialist representation on the Investment Advisory Committee; spoke in support of adding a second Industry Specialist to the Investment Advisory Committee membership.

Al Cullen, San Clemente, opined that it would be inappropriate for Council to appoint a member to the Investment Advisory Committee at this time since the position has not been advertised. (*Council clarified that it is discussing the desired make-up of the Investment Advisory Committee, specifically whether or not an additional Industry Specialist position should be added, and explained that an appointment will not be made at this time.*)

Councilmember Donchak stated for the record that she disagrees with adding a second Industry Specialist position to the Investment Advisory Committee, but concurs with the other Investment Policy changes that were proposed.

MOTION BY MAYOR BAKER, SECOND BY COUNCILMEMBER BROWN, CARRIED 3-1 (COUNCILMEMBER DONCHAK VOTING NOE AND COUNCILMEMBER HAMM ABSENT) to adopt Investment Policy and Procedure 202-1, effective December 15, 2015.

Council determined that City residency will not be required of Industry Specialist applicants.

7. PUBLIC HEARINGS

A. Wal-Mart Instructional Alcohol Tasting (951 Avenida Pico) - Appeal of Conditional Use Permit 15-124

Public Hearing to consider an appeal by the City Council to consider the Planning Commission's October 7, 2015 approval of a request for beer and wine tastings within the grocery area of the Wal-Mart, located within the Mixed Use zoning designation of the Rancho San Clemente Specific Plan at 951 Avenida Pico.

Associate Planner Nicholas reviewed the contents of the Administrative Report and responded to Council inquiries.

Mayor Baker opened the Public Hearing.

Brent McManigal, representing Wal-Mart, reviewed the logistics of the proposal, noting that the alcohol tasting will occur within the grocery section and will be located in such a manner as not to impair shopper ingress or egress; explained that the alcohol tasting area will be cordoned off and only persons aged 21 or older will be allowed to access the area; reviewed ABC beer and wine sampling regulations as compared to Wal-Mart's more restrictive practices; urged Council to approve the Planning Commission's recommendations and responded to Council inquiries.

Anthony Lafrano, San Clemente, urged Council to not approve the proposal since it is contrary to San Clemente's values and could jeopardize safety.

There being no others desiring to speak, the Public Hearing was closed.

Following deliberations, MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to direct Staff to return to Council with a Resolution of Denial, without prejudice, that includes findings for the denial of Wal-Mart's proposal for beer and wine instructional tasting at 951 Avenida Pico.

B. Norfolk Pine Tree Removal (513 Elena Lane) - Appeal of Minor Cultural Heritage Permit 15-228

Public Hearing to consider an appeal by the City Council to consider the Zoning Administrator's October 21, 2015 approval of a request for the removal of a Norfolk Pine tree on a vacant lot across the street from and abutting a historic structure at 516 Elena Lane. The subject property is located in the Residential Medium Density zoning district and Coastal Overlay (RM-CZ) at 513 Elena Lane.

Associate Planner Wright reviewed the contents of the Administrative Report and responded to Council inquiries.

Mayor Baker opened the Public Hearing.

Trevor Moylan, San Clemente, reported that he is a former tenant at the subject property; noted the tree created a hazard because of its large pine cones; asserted the pine tree infiltrated the property's plumbing to the point that the master bathroom became unusable.

Larry Culbertson, San Clemente, urged Council to not authorize the tree's removal; asserted the tree's condition has been rated a 5 on a scale of one to ten and should not be removed until a development plan demonstrates the tree would interfere with the development.

Patricia Holloway, San Clemente, stated that the subject tree does not block ocean views and serves as a neighborhood-defining feature; reported that an arborist found the tree to be in excellent health in April 2015, but its health has suffered as a result of a lack of protection during construction and a lack of watering during drought conditions; stated that the City of San Juan Capistrano is diligent about protecting its trees during construction and strives to design projects around significant trees.

Dana Haynes, Applicant, noted that the previous owner of the home was struck by pine cones as was her vehicle; stated the tree needs to be removed because it is in the wrong location; cited liability concern for himself as well as for the City due to the large pine cones.

Ron Matranga, Arborist, stated the tree is in a distressed condition; reported that the tree will continue to grow both above and below ground; opined the pine cones can harm people and vehicles.

There being no one others desiring to speak, the Public Hearing was closed.

Following discussion, MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BROWN, CARRIED 3-1-1 (MAYOR PRO TEM WARD VOTING NOE, AND COUNCILMEMBER HAMM ABSENT), to adopt Resolution No. 15-58 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING MINOR CULTURAL HERITAGE PERMIT 15-228, A REQUEST TO ALLOW THE REMOVAL OF A TREE ON A SINGLE-FAMILY RESIDENTIAL SITE ABUTTING A HISTORIC STRUCTURE, ON A SUBJECT PROPERTY LOCATED AT 513 ELENA LANE, with direction that the tree be replaced with trees as recommended by City Staff.

MEETING RECESSED

Council recessed at 8:51 p.m. and reconvened at 9:05 p.m., with all members present, except Councilmember Hamm who was absent.

C. San Clemente Coastal Land Use Plan

Public Hearing to consider the June 30, 2015 Planning Commission recommendation to adopt the City's Land Use Plan for the City's Local Coastal Program.

City Attorney Smith explained that all Councilmembers, with the exception of Councilmember Donchak, own property within 500 feet of the Coastal Zone and hence, under the Political Reform Act, have a disqualifying real estate interest in decisions relating to the Land Use Plan; explained, however, that the "public generally" exception may be invoked where a significant segment (25%) of the jurisdiction is affected by the action in a similar fashion; stated that since 28% of the City's residential parcels are affected by the LUP, all Councilmembers are eligible to participate in this agenda item.

Associate Planner Ciampa narrated a PowerPoint presentation entitled "Coastal Land Use Plan" and responded to Council inquiries. A hard copy of the presentation is on file with the City Clerk.

Mayor Baker opened the Public Hearing.

Jo Cuchid, San Juan Capistrano, stated that she also owns a home at the Capistrano Shores Mobile Home Park; read a letter on behalf of Neils and Gloria Peterson that urged the City to not consent to any provision that would require residents to give up their rights to reconstruct a seawall to protect their home from wave or flood damage; opined that it would be unjust and unconstitutional to require Capistrano Shores residents to relinquish their right to protect their property from unremediated loss.

Sue Loftin, general counsel for Capistrano Shores, Inc., requested additional time to review the language in the Land Use Plan; stated that Staff has expressed it is not the City's intent to close the Capistrano Shores Mobile Home Park or to prevent park owners from replacing their homes or seawall, but contradictory language currently exists in the document; voiced concern that if a natural disaster occurs and 50% of the homes suffer 50% damage, then no one will be able to replace their home; requested that the Public Hearing be continued.

Al Cullen, San Clemente, voiced concern that City decisions made on projects located 300' beyond the shoreline cannot be appealed to the Coastal Commission, noting that he resides within the coastal zone and believes that he should have appeal capability; requested that the Pacific Coast Highway underpass be removed from the Coastal Access Map (Figure 3.8) inasmuch as the underpass could never be reconstructed due to environmental regulations, necessity for ADA access, prohibitive cost and insurance requirements; urged Council to appoint a citizens committee, with City-wide representation, to study the LUP.

Vasily Semeniuta, San Clemente, conveyed concern that the Land Use Plan allows government intrusion into private property rights.

Craig Cooper, San Clemente, read a letter from Mr. Redkay* (**spelling of name was not provided*) that addressed the portion of the Land Use Plan relating to "Compensation for Taking Private Property"; opined that the inclusion of the subject language in the Land Use Plan is ill-advised given that the City does not have the power to grant or deny a permit in a manner that will take or damage private property without the payment of just compensation therefor.

Gerry Loughman, Capistrano Shores Board Member, thanked Council and Staff for making changes to the Land Use Plan based on their suggestions; voiced concern that Council has not had time to review all comments submitted by Capistrano Shores and urged Council to continue the Public Hearing.

Alexander Maniscalco, attorney for Capistrano Shores, asserted that the Land Use Plan is a final application that will be submitted to the Coastal Commission; urged Council to delay adoption to allow Staff to work with Capistrano Shores representatives; noted the importance of respecting property rights.

Eric Anderson, General Manager of Capistrano Shores, voiced concern that Capistrano Shores is a legal non-conforming use, but is referenced in the LUP draft as a non-conforming use; opined the Capistrano Shores language in the LUP is incomplete and urged Council to continue the Public Hearing.

Sherman Stacey, Attorney for Capistrano Shores, noted the policies concerning the shoreline apply only to Capistrano Shores; requested Council expand the language to state that the replacement of mobile homes will not be considered as a major remodel or new development.

Eric Wills, Board Member for Capistrano Shores, voiced concern with the LUP language relating to the 50% damage rule (which prohibits reconstruction) due to the fact that it is inequitable and only applies to Capistrano Shores; voiced concern that the LUP does not allow the Capistrano Shores properties to be protected and then prohibits reconstruction if 50% damage is incurred.

Jack Wills, San Clemente, stated that he has resided at the Capistrano Shores Mobile Home Park with his parents since he was 18 months old; voiced concern that the current LUP language places the Capistrano Shores Mobile Home park at peril and jeopardizes his ability to remain at the park to raise his future children.

Damon Suter, San Clemente, urged Council to delay submitting the Land Use Plan to the Coastal Commission; opined that the Coastal Commission does not want the mobile home park to remain and urged Council to remain cognizant of that fact; opined that prohibiting him from replacing or repairing his home in the event it incurs 50% damage would constitute a "taking".

John Corn, Attorney on behalf of 15 individual homeowners of Capistrano Shores, indicated the Land Use Plan needs to be modified to reflect the City's needs as well as the best interests of personal homeowners.

Steve Samuelian, Capistrano Shores Board Member, stated that it is not the City's desire to take Capistrano Shores' land, but opined that portions of the Land Use Plan perpetuate that idea; stated that mobile homes are a singular structural piece and, as such, cannot be repaired when they incur significant damage; noted that owners in Capistrano Shores are committed to neighborhood beautification and urged Council to continue the Public Hearing to allow the remaining issues to be resolved.

Cheryl Moe, San Clemente, noted that coastal canyons represent a small portion of the canyons in San Clemente and are basically privately owned, yet are being imposed with the major burden of improving the environment; expressed hope that the LUP will make it easier to improve coastal canyon properties and to enhance the environment; urged that setback requirements be reflective of the environment and property owners' rights.

Mark McGuire, San Clemente, spoke in support of the Land Use Plan, but suggested that the portion of the plan relating to ESHA designations could be improved upon; stated that ephemeral streams, coastal sage scrub and sandy beaches are not always ESHAs under the Coastal Act and hence should not be presumed to be ESHAs in the LUP; suggested that canyon and wetland setbacks be more than 100' so as to avoid the unintended consequence of creating non-conforming structures in coastal canyons.

The following residents submitted speaker cards that noted their opposition to the Coastal Land Use Plan, but did not desire to verbally address Council:

Patricia Salhi, San Clemente

Alex Solik, San Clemente

Bessie Suter, San Clemente

Tish Witkin, San Clemente

Rick Gallagher, San Clemente

Kim Gallagher, San Clemente

Randy Bailey, San Clemente

Resident of Capistrano Shores (name illegible on speaker card)

There being no others desiring to speak on this issue, the Public Hearing was closed.

Following discussion, MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BROWN, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to re-open and continue the Public Hearing to the Council meeting of January 19, 2016 to allow further collaboration with affected citizens and residents and to address questions from the public and Council this evening.

D. Annual Report Concerning the Mitigation Fee Act for FY 2015

Public Hearing to consider the City of San Clemente Annual Mitigation Fee Act Report Fiscal Year 2015 pursuant to Government Code Section §66006. Section 66006 provides that if a fee is imposed as a condition of development, the city shall deposit those fees in a separate capital facilities account. For each account created, the city shall, within 180 days after the end of the fiscal year, make certain information available to the public.

Business Services Officer Rendina reviewed the contents of the Administrative Report.

Mayor Baker opened and closed the Public Hearing, there being no one desiring to speak to this issue.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to receive and file the Annual Report concerning the Mitigation Fee Act for Fiscal Year 2015.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **Prohibition of Unauthorized Commercial, Organized or Instructional Activities on Public Beaches, Parks and Trails Without a Permit**

Report from the Beaches, Parks and Recreation Department concerning the possibility of prohibiting unauthorized commercial, organized or instructional activities on public beaches, parks and trails without a permit.

Recreation Manager Passow reviewed the contents of the Administrative Report and responded to Council inquiries.

MOTION BY MAYOR BAKER, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT) to introduce Ordinance No. 1612 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTER 12.28 OF THE SAN CLEMENTE MUNICIPAL CODE AMENDING 12.28.010 DEFINITIONS.

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

Short Term Vacation Rentals

Jim Laurent, San Clemente, voiced concerns with short-term vacation rentals; asserted that renters disrupt residential neighborhoods via increased noise and street activity.

11. REPORTS**A. Commissions and Committees**

None.

B. City Manager

None.

C. City Attorney

City Attorney Smith reported that Council will recess to Closed Session at the end of the Business Meeting to continue discussion of items on the Closed Session agenda (See pages 1 and 2 of these minutes for a list of the Closed Session topics).

D. Council Members**1. California Road Charge Pilot Program Update**

Councilmember Donchak reported that a task force has been created to explore ways to collect revenues to maintain roads and bridges; noted that a 9-month pilot study will help determine substitutes for the gas tax; requested that information about the California Road Charge Pilot project be placed on the City's website.

Orange County Transportation Authority (OCTA) 191 and 193 Bus Route Information

Councilmember Donchak reported on ridership for the 191 and 193 bus routes; noted that destination-driven transportation tends to be more successful than bus routes with multiple stops.

Transportation Corridor Agency (TCA) Report

Mayor Pro Tem Ward reported that the TCA approved a cooperative agreement with the County of Orange for the design of an Oso Bridge connector to Los Patronas Parkway (which is being built by the Rancho Mission Viejo Company); noted that the traffic ascertainment study is expected to be complete in January 2016 and a representative from the TCA, together with its traffic study consultant, will provide a report to Council at a future meeting.

Watershed Task Force’s Holiday Dinner for Marines

Councilmember Brown commended the Watershed Task Force for its successful Marine Holiday Dinner and raffle.

Camp Pendleton Change of Command Ceremony

Mayor Baker reported on his attendance at the Change of Command Ceremony at Camp Pendleton and displayed photographs of the event. Hard copies of the photographs are on file with the City Clerk.

Ole Hanson Beach Club Tour

Mayor Baker reported on his tour of the Ole Hanson Beach Club and displayed photographs of the construction progress. Hard copies of the photographs are on file with the City Clerk.

12. RESOLUTIONS/ORDINANCES

None.

RECESS TO CLOSED SESSION

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BROWN, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to recess to Closed Session at 10:58 p.m. to continue discussion of items on the Closed Session Agenda (See Pages 1 and 2 of these minutes for a list of the Closed Session topics).

MEETING RECONVENED

Council returned to the dais at 11:10 p.m. with all members present, except Councilmember Hamm.

Closed Session Report – Appeal of San Diego Regional Water Quality Control Board’s MS4 Permit

City Attorney Smith reported that during the Closed Session, the City Council authorized Staff and the City Attorney to file an appeal of the San Diego Regional Water Quality Control Board’s recent MS4 permit as issued with errata on November 10, 2015.

13. ADJOURNMENT

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR BAKER, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to adjourn at 11:13 p.m. The next Regular Council Meeting will be held on January 5, 2016 in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California. Closed Session items will be considered at 5:00 p.m. The Regular Business Meeting will commence at 6:00 p.m.



MAYOR of the City of
San Clemente, California



CITY CLERK of the City of
San Clemente, California