

# CITY OF SAN CLEMENTE

## City Council Minutes

### Special and Regular City Council Meeting – October 4, 2016

*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 Meeting of the San Clemente City Council was called to order on October 4, 2016 at 4:31 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Baker.

**PRESENT** BROWN, DONCHAK, WARD, MAYOR BAKER

**ABSENT** HAMM

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

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#### **CLOSED SESSION (Special Meeting)**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR BAKER, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to recess to Closed Session at 4:31 p.m. to discuss the following:

**A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code Section 54957

Title: City Manager

**B. CONFERENCE WITH LABOR NEGOTIATORS**

Pursuant to Government Code Section 54957.6

Agency designated representative: Mayor

Unrepresented employee: City Manager

**C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Existing litigation pursuant to Government Code section 54956.9(d)(1)

Number of Cases: 5

Case Name: Emergency Shelter Coalition v. City of San Clemente

Case Number: OCSÇ 30-201400758880

*Closed Session Items continued on following page*

Case Name: City of San Clemente v Sobertec LLC (1)  
Case Number: OCSC 30-2015-00805227

Case Name: City of San Clemente v Coast To Coast Referral Center, Inc.  
Case Number: OCSC 30-2015-00806052

Case Name: City of San Clemente v. Dual Diagnosis Treatment Center, Inc.  
Case Number: OCSC 30-2015-00805214

Case Name: Dual Diagnosis Treatment Center, Inc. v. City of San Clemente  
Case Number: USDC 8:15-cv-01611CJC-JCG

- D. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**  
Initiation of litigation pursuant to Government Code section 54956.9(d)(4)  
Number of potential cases: 2

In attendance for the full Closed Session were all members of the City Council (with the exception of Councilmember Hamm), City Manager Makshanoff and City Attorney Smith. Assistant City Manager Sund and Community Development Director Gallardo-Daly were in attendance for Items C and D and Attorney Christina Talley, with Best Best & Krieger, was in attendance for Item C.

### **MEETING RECONVENED (Regular Meeting)**

Council reconvened at 6:02 p.m., with all members present.

### **INVOCATION**

Councilmember Brown gave the invocation.

### **PLEDGE OF ALLEGIANCE**

Councilmember Donchak led the Pledge of Allegiance.

## **1. SPECIAL PRESENTATIONS**

### **A. San Clemente High School Update**

San Clemente High School students Sara Barnes and Brigham Maready narrated a PowerPoint presentation entitled "San Clemente High School, October 4, 2016" concerning campus activities. A hard copy of the PowerPoint is on file with the City Clerk.

## 2. ORAL COMMUNICATIONS (PART 1)

### Marquita Canyon Issues

Mark Mortasini, San Clemente, voiced concern that homeless individuals reside in the Marquita canyon access at Calle Puente and West Marquita; displayed photographs of trash and graffiti in the canyon. A hard copy of Mr. Mortasini's photographs are on file with the City Clerk.

### Homeless Shelter

Anthony LaFrano, San Clemente, opined that property near Denny's should not be zoned for possible homeless shelter use, because of its proximity to San Clemente High School; presented an email from Jim Bieber relating to vacation rentals by owner (VRBOs).

### Ole Hanson Beach Club Grand Opening/ Municipal Water District of Orange County (MWDOC)

Richard Gardner, Capistrano Beach, congratulated Council and Staff on the grand re-opening of the Ole Hanson Beach Club and commented on his candidacy for MWDOC's district seven seat, which covers San Clemente.

### Outlet Mall Signage

Ben Doran, San Clemente, spoke in opposition to the outlet signage due to his belief that they are unnecessary, create visual clutter, block views, and pose safety hazards for motorists; urged that the City soften the impact that the signage at the mall will have on the community.

Jeff Pantakhoff, President of Faire Harbour Homeowners Association, suggested the signage at the outlet mall causes visual blight and that the lighted signage violates the City's dark sky ordinance; opined that current technology negates the need for excessive signage.

Sonia Farnsworth, San Clemente, noted she approves of the Spanish architecture of the outlet mall but suggested that brand signage on buildings is not necessary to attract customers; opined that signage should be limited to one "Outlets" sign and/or freeway directional signage.

Marilyn Ferber, San Clemente, voiced concern with commercial signage at the outlet mall; suggested that signage is not necessary for the mall to be successful.

**Legal Fees Rate Structure**

Brad Malamud, San Clemente, opined that Council should adopt a most favored nations clause billing rate for future legal work; voiced concern with the City's legal fees and suggested that the City hire in-house litigators to reduce costs.

Robert Thompson, San Clemente, voiced concern that the City's litigation costs are increasing.

3. MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0 (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**

**Withdrawal of City's Declaratory Relief Action – By-District Elections**

City Attorney Smith announced that during tonight's Closed Session, Council unanimously withdrew its direction to the City Attorney's office to file a declaratory relief action seeking court direction on the by-district Councilmember election initiative that is pending; noted that AB 278 (Municipal Elections) was signed by the Governor, which mooted the issue for which Council was seeking direction.

**City Manager's Employment Contract**

City Attorney Smith reported that during Closed Session, Council set terms for the City Manager's employment agreement and the City Manager accepted those terms; stated that the specific contract modifications will be reported as part of Agenda Item 7-C on tonight's agenda.

6. **CONSENT CALENDAR**

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

A. City Council Minutes

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BROWN, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve the minutes of the Special and Regular City Council Meeting of September 20, 2016.

B. Receive and file:

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

1. Minutes of the Adjourned Regular Planning Commission Meeting of September 21, 2016.
2. Minutes of the Regular Zoning Administrator Meeting of September 22, 2016.

C. Warrant Register

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

Wire Transfer Nos. 1555 through 1558 and  
 Warrant Nos. 535715 through 535824  
 paid on 9/16/2016, in the amount of .....\$1,090,045.30

Warrant Nos. 535825 through 536059  
 paid on 9/23/2016, in the amount of .....\$ 488,893.25

TOTAL WARRANT REGISTER ....\$1,578,938.55

Payroll Register

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

Warrant Nos. 525 through 529 and  
 Automatic Deposit Advises 34980 through 35291  
 for the period of 8/29/16 through 9/11/16,  
 paid on 9/16/2016, in the amount of ..... \$432,608.06

TOTAL PAYROLL REGISTER ..... \$432,608.06

D. **Contract Amendment – As Needed Storm Water Quality Technical Support**

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

1. Approve, and authorize the City Manager to execute, Amendment No. 1 to Contract AC-692, by and between the City of San Clemente and AMEC Foster Wheeler, providing for storm water quality staff/technical support. This contract amendment will increase the total compensation from \$25,000 to \$50,000, an increase of \$25,000, and extend the term of the agreement to March 31, 2017.
2. Approve and authorize a supplemental appropriation of \$25,000 from the Clean Ocean undesignated fund balance to Account 057-541-43690 (Other Professional Services).

E. **Grant Submittal – Orange County Transportation Authority (OCTA) Measure M2 Regional Traffic Signal Synchronization Program (Project P)**

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

1. Authorize the submittal of Measure M2 (Project P) grant application to OCTA for signal synchronization on the Camino Vera Cruz corridor.
2. Adopt Resolution No. 16-58 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING THE SUBMITTAL OF CAMINO VERA CRUZ TRAFFIC SIGNAL SYNCHRONIZATION PROJECT TO THE ORANGE COUNTY TRANSPORTATION AUTHORITY FOR FUNDING UNDER THE COMPETITIVE MEASURE M2 REGIONAL TRANSPORTATION SIGNAL SYNCHRONIZATION PROGRAM.

F. **Establishment of 'No Stopping' Zones on Calle Frontera**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BROWN, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to adopt Resolution No. 16-59 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MASTER TRAFFIC RESOLUTION NO. 1846, ESTABLISHING "NO STOPPING ZONES" ON CALLE FRONTERA.

**H. Records Destruction**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BROWN, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to adopt Resolution No. 16-60 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.

**I. Lease of Multi-Functional Copier Devices for all City Offices**

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

1. Approve, and authorize the Business Services Officer to execute, a sixty (60) month lease agreement with Cell Business Equipment, providing for copy machines for City Offices, in an amount not to exceed \$34,840 annually.
2. Declare the existing copiers surplus, and authorize the Business Services Officer to dispose of them as outlined in Policy No. 201-2-4.

**J. Recreation Sports Partnership Review - South Coast Youth Football**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BROWN, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve, and authorize the Mayor to execute, Contract C16-61, a Platinum Partnership Agreement, by and between the City of San Clemente and South Coast Youth Football.

**ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION****G. Initiation of Amendment to Zoning Ordinance that Considers Locations and Processing Requirements Related to Thrift Stores, Smoke and Vape Shops, Check-Cashing Stores and Pawn Shops**

J. P. Spitz and Diana Spitz, representing Kathy's House, a non-profit organization, reported that they signed a lease to operate a thrift shop at the former Bakers Square building; noted their thrift stores raise funds to help homeless persons; urged Council to not amend the zoning ordinance to prohibit their thrift stores from operating.

During the course of discussion, City Attorney Smith explained the point at which a thrift store use at the former Bakers Square location becomes vested.

Laurie Moore, San Clemente, spoke in support of Kathy's House; urged Council to not prohibit thrift stores.

City Planner Pechous responded to Council inquiries.

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

1. Initiate an amendment to the Zoning Ordinance that considers locations and requirements related to Thrift Stores, Smoke and Vape Shops, Check-Cashing Stores and Pawn Stores uses.
2. Refer the issue to the Planning Commission before agendizing the zoning amendment for Council consideration.
3. Direct Staff to examine models and best practices currently in use in other California cities.
4. Authorize Staff to include ancillary-related uses in the zoning amendment that are not currently specified if Staff's research into model ordinances reveals that ancillary uses should be addressed.

**K. Designation of Legal Fees**

Brad Malamud, San Clemente; urged Council to agendize the issue of reinstating the original zoning for the hospital site to end the pending lawsuit; urged Council to adopt a most favored nations rate structure.

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

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Approve the estimated legal costs for the three cases noted in the Administrative Report, dated October 4, 2016, and on file with the City Clerk.
2. Approve a supplemental appropriation from the Fund Balance in the General Liability Fund in the amount of \$990,000 to Other Legal Services, Account 068-816-43640-000-00000.



Council requested that Staff report to Council on a quarterly basis relative to legal fees, and further requested that the City Attorney alert Council if, in BBK's opinion, the City's chances of prevailing in the hospital lawsuit are reduced to less than 50%.

7. **PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

A. **Contract Award – Rideshare Beta Test Rider**

Report from the Public Works Director/City Engineer concerning implementing a Rideshare Beta Test Rider.

Public Works Director/City Engineer Cameron and Transportation Engineering Manager Frank reviewed the contents of the Administrative Report and narrated a PowerPoint presentation entitled "Contract Award to Lyft for the Rideshare Beta Test Rider", and, along with Tim Houghton, Market Manager of Orange County, and Deborah Schrimmer, Transportation Partners Analyst, responded to Council inquiries. A hard copy of Mr. Frank's presentation is on file with the City Clerk.

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve and authorize the City Manager to negotiate the final terms of Contract C16-63, by and between the City of San Clemente and Lyft, providing for Rideshare Services for a two-year period, subject to City Attorney approval, in an amount not to exceed \$900,000.

**MEETING RECESSED**

Council recessed at 7:53 p.m. and reconvened at 8:10 p.m., with all members present, except Councilmember Hamm who was absent.

9. **NEW BUSINESS**

**A. South Orange County Wastewater Authority (SOCWA) Potential Structural Voting Modifications**

Report from the Public Works Director/City Engineer concerning SOCWA potential structural voting modifications.

Public Works Director/City Engineer Cameron reviewed the contents of the Administrative Report and responded to Council inquiries.

Jake Vollebregt, Director of Regional and Legal Affairs at Moulton Niguel Water District, reported that Moulton Niguel Water District supports the proposed SOCWA voting structure and urged Council to support the changes.

MOTION BY MAYOR BAKER, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to direct Staff to continue discussions regarding making changes to the SOCWA voting structure and to report back and receive City Council authorization prior to voting on any changes to SOCWA's voting structure.

**B. Code Amendment – Trespass on Private Property**

Report from the Community Development Director concerning the possibility of amending the Code of the City of San Clemente as it relates to trespassing on private property.

Deputy Community Development Director King reviewed the contents of the Administrative Report and responded to Council inquiries.

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR BAKER, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to introduce Ordinance No. 1633 entitled AN ORDINANCE OF THE CITY COUNCIL OF SAN CLEMENTE, CALIFORNIA, AMENDING THE SAN CLEMENTE MUNICIPAL CODE BY ADDING CHAPTER 9.24, SECTIONS 9.24.010 THROUGH 9.24.080, REGARDING TRESPASS ON PRIVATE PROPERTY.

**C. Contract Amendment – City Manager Employment Agreement**

Report from the City Attorney concerning the possibility of amending the City Manager's employment agreement.

City Attorney Smith reported that Council voted in Closed Session to modify the City Manager's employment contract to include increasing the City Manager's annual salary by 2.44% to \$248,136, Range 99 Step D, and modified Section 17 of the contract, as contained in the Administrative Report, dated October 4, 2016.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BROWN, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve, and authorize the Mayor to execute, Amendment No. 2 to Contract C14-36, the employment agreement by and between the City of San Clemente and City Manager James Makshanoff.

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

Anthony LaFrano, San Clemente, urged Council to retain an economic development specialist in order to increase City revenue; suggested the City needs a business plan to attract revenue-generating businesses to the City.

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

None.

**B. City Manager**

None.

**C. City Attorney**

None.

**D. Council Members****Toll Road Public Forum**

Mayor Pro Tem Ward reported that the Transportation Corridor Agency is hosting a meeting on October 5, 2016 at St. Andrew's Church to discuss potential toll road extensions through San Clemente.

**Naming of Ole Hanson Beach Club Pool**

Councilmember Donchak stated a group of residents has requested that Council agendaize the possibility of naming the Ole Hanson Beach Club pool after Evangeline (Van) Rutan, who served as San Clemente's first swim teacher. Council concurred and directed Staff to include in its report a listing of Ms. Rutan's credentials, possible location(s) for the plaque that would be displayed at the Beach Club, and assessment of the precedent-setting potential for such an action.

**Ole Hanson Beach Club Grand Re-Opening**

Councilmember Brown recognized the Ole Hanson Beach Club grand re-opening and noted the pool is not yet open for operation, but is expected to be open for use by the end of the month; explained that the Beaches, Parks and Recreation Commission will discuss the hours of operation for the Ole Hanson Beach Club pool and Vista Hermosa Aquatics facility at its meeting of October 26, 2016.

Mayor Baker displayed photographs of the ribbon cutting event at the Ole Hanson Beach Club. A hard copy of the photographs are on file with the City Clerk.

**San Clemente Village**

Mayor Baker reported on the launch of San Clemente Village, which allows senior citizens to remain in their homes with the help of volunteers.

**Alzheimer's Association Expression of Gratitude**

Mayor Baker noted that the Alzheimer's Association thanked Council for recognizing September as World Alzheimer's Awareness Month.

12. **RESOLUTIONS/ORDINANCES**

A. **Ordinance No. 1632 (Second Reading) - Zoning Amendment 16-313 – Regulations Relating to Personal, Medical and Commercial Use of Marijuana**

MOTION BY MAYOR BAKER, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to reconsider the ordinance relating to personal, medical and commercial use of marijuana. Council requested that the Administrative Report address the cost to purchase marijuana.

This issue will be scheduled for Public Hearing on October 18, 2016.

13. **ADJOURNMENT**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to adjourn at 8:45 p.m. The next Regular City Council Meeting will be held on October 18, 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