

CITY OF SAN CLEMENTE

City Council Minutes

Regular City Council Meeting – October 18, 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 Regular Meeting of the San Clemente City Council was called to order on October 18, 2016 at 5:02 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Baker.

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

*Arrived at 5:05 p.m.

ABSENT NONE

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

* * *

CLOSED SESSION

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0 (MAYOR PRO TEM WARD ABSENT), to recess to Closed Session at 5:03 p.m. to discuss the following:

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

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

Number of Cases: 7

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

Case Number: OCSC 30-201400758880

Case Name: San Clemente Vacation Rental Alliance v. City of San Clemente

Case Number: OCSC 30-2016-00858999-CU-WM-CJC

Case Name: Brault v. City of San Clemente

Case Number: OCSC 30-2016-00843347-CL-MC-CJC

Case Name: City of San Clemente v Sobertec LLC (1)

Case Number: OCSC 30-2015-00805227

Closed Session items continued on following page

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

B. 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

In attendance for the full Closed Session were all members of the City Council, City Manager Makshanoff, Assistant City Manager Sund and City Attorney Smith. Community Development Director Gallardo-Daly and Attorney Cristina Talley, with Best Best & Krieger, were in attendance for Item A.

MEETING RECONVENED

Council reconvened at 6:10 p.m., with all members present.

INVOCATION

Mark Ambrose, Lead Pastor, Pacific Coast Church, gave the invocation.

PLEDGE OF ALLEGIANCE

Eagle Scout Matthew McWilliams led the Pledge of Allegiance.

MOMENT OF SILENCE FOR FALLEN PEACE OFFICERS

Meeting attendees observed a moment of silence in remembrance of the following peace officers who recently lost their lives in the line of duty:

Sgt. Steve Owen, Los Angeles County Sheriff's Department
Officer Jose Gil Vega, Palm Springs Police Department
Lesley Zerebny, Palm Springs Police Department.

1. **SPECIAL PRESENTATIONS**

A. **Presentation of Proclamation - Red Ribbon Week**

Mayor Baker presented a Proclamation to Peggy Lacayo, Recreation Supervisor, proclaiming October 24-30, 2016 as Red Ribbon Week.

B. **Presentation of Proclamation – World Pancreatic Cancer Day**

Mayor Baker presented a Proclamation to Bob Sottile, declaring November 17, 2016 as World Pancreatic Cancer Day.

C. **Presentation of Commendation – Eagle Scout Matthew McWilliams**

Mayor Baker and Councilmember Brown presented a Commendation to Matthew McWilliams for achieving the rank of Eagle Scout.

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

Maintenance of El Camino Real/Avenida Del Mar and Pier - Welfare Concerns for Homeless Persons

Jenifer Massey, San Clemente, voiced concern with the cleanliness and condition of sidewalks on El Camino Real and Del Mar and inadequate cleanliness of the pier; requested that the signs on the pier that asked fishermen to use fish cutting boards be reinstalled; expressed welfare concerns for homeless families in the City.

Municipal Water District of Orange County (MWDOC)

Susan Hinman, Municipal Water District of Orange County (MWDOC) Director, stated that she has decided to not seek re-election as a MWDOC Director; commented on the ongoing drought, the importance of educating the public on water issues, and preparing for major events, such as earthquakes; stressed the importance of working together for a comprehensive South Orange County water supply and reliability system.

Sober Living Home on Avenida Salvador

David Schneider, San Clemente, stated that an unlicensed sober living facility is operating near his home on Avenida Salvador; cited safety concerns and noted that an intruder entered his home because he thought it was a sober living home; opined that sober living facilities are commercial businesses; requested assertive City action relative to sober living facilities.

San Clemente Residence in State of Disrepair

Stephen James, San Clemente, stated that his neighbor's home is in a state of disrepair (loose roof tiles, peeling paint, overgrown vegetation, and lack of utilities); noted that the roof tiles are loose, heavy, and could pose serious bodily harm if they were to fall on one of his children; stated that his homeowners association indicated that it is the City's responsibility to maintain building safety standards; urged Council to require that corrective actions be taken.

Alleged Ethics Violation

Anthony LaFrano, San Clemente, displayed an email from Jim Bieber to Councilmember Donchak, dated January 4, 2016, that is on file with the City Clerk; opined that the email, which referenced Councilmember Hamm and Mayor Baker, was inappropriate and requested that an investigation be conducted to determine whether an ethics violation occurred.

Loss of San Clemente Hospital and Associated Lawsuit

Jim Bieber, San Clemente, stated that Council failed to keep a hospital in San Clemente and is facing a \$42 million lawsuit because the City spot zoned the hospital property; opined that the City will lose the lawsuit.

3. MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM WARD, 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**

City Attorney Smith stated that Council took no reportable action during this evening's Closed Session.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM WARD, CARRIED 5-0, to approve the Consent Calendar, with the removal of Items D and L.

A. **City Council Minutes**

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM WARD, CARRIED 5-0, to approve the minutes of the Special and Regular City Council meeting of October 4, 2016.

B. **Receive and file:**

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM WARD, CARRIED 5-0, to receive and file the minutes of the Regular Zoning Administrator meeting of October 5, 2016.

C. **Warrant Register**

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

Wire Transfer Nos. 1559 through 1562 and
Warrant Nos. 536060 through 536252
paid on 9/30/2016, in the amount of\$1,868,847.21

Warrant Nos. 536253 through 536416
paid on 10/7/2016, in the amount of\$1,797,251.92

TOTAL WARRANT REGISTER\$3,666,099.13

Payroll Register

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

Warrant Nos. 530 through 532 and
Automatic Deposit Advises 35292 through 35597
for the period of 9/12/16 through 9/25/16,
paid on 9/30/2016, in the amount of \$415,526.27

TOTAL PAYROLL REGISTER \$415,526.27

E. **Sand Replenishment Project – Acceptance of Grant Revenue and Supplemental Appropriation for the Corps of Engineers Design Phase Cost Sharing Contribution**

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

1. Accept grant revenue from the California Division of Boating and Waterways in the amount of \$281,000 to General Fund Account 001-000-33443-000-00000 (Sand Replenishment Grant).
2. Approve a supplemental appropriation of \$281,000 from the General Fund to Account 001-411-45800-000-19907 (Sand Replenishment Project).

F. **Parking Restrictions on Avenida Pico East of Camino La Pedriza**

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM WARD, CARRIED 5-0, to adopt Resolution No. 16-61 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MASTER TRAFFIC RESOLUTION NO. 1846, ESTABLISHING "RESTRICTED PARKING AREA" ON AVENIDA PICO.

G. **Acceptance of Domestic Water, Sewer and Recycled Water Improvements Related to the Marblehead Coastal Development and Release of Performance and Labor & Material Bonds**

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM WARD, CARRIED 5-0, to adopt Resolution No. 16-62 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE ACCEPTANCE OF VARIOUS WET UTILITY IMPROVEMENTS IN WEST AVENIDA VISTA HERMOSA AND AVENIDA PICO AND RELEASE OF PERFORMANCE AND LABOR & MATERIAL BONDS RELATED TO THE MARBLEHEAD COASTAL DEVELOPMENT IN TRACT 8817.

H. Change Order – Linda Lane Pump Station Protection

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

1. Authorize the Public Works Director/City Engineer to approve Change Order No. 2 to Contract C15-52, by and between the City of San Clemente and Wright Construction Engineering Corporation, providing for protection of the Linda Lane Pump Station. This Change Order increases the contract amount from \$107,845 to \$142,349, an increase of \$34,504.
2. Approve a supplemental appropriation of \$12,000 to Account 054-476-45300-000-16209 from the Sewer Fund Depreciation Reserve.

I. Contract Award - On-Call Supervisory Control and Data Acquisition (SCADA) Support

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM WARD, CARRIED 5-0, to approve, and authorize the Mayor to execute, Contract C16-65 by and between the City of San Clemente and AppIT, LLC, providing for integration and programming services for on-call SCADA support, in the amount of \$150,000.

J. Contract Award – Pavement Management System Update

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM WARD, CARRIED 5-0, to approve, and authorize the Mayor to execute, Contract C16-66 by and between the City of San Clemente and Bucknam Infrastructure Group, Inc. providing for an upgrade to the City's Pavement Management System, in the amount of \$49,250.

K. Contract Award – Operational Continuity Data Center

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

1. Approve the plans and specifications for the Operational Continuity Data Center, Project No. 13810.
2. Approve a supplemental appropriation in the amount of \$115,840 to Account 063-241-45300-000-13810.
3. Approve a transfer in the amount of \$29,328 from the General Fund's Unassigned Fund Balance to Account 063-241-45300-000-13810.

Motion continued on following page

1. Approve a transfer in the amount of \$43,256 from the Water Depreciation Reserve (052-466) to Account 063-241-45300-000-13810.
2. Approve a transfer in the amount of \$43,256 from the Sewer Depreciation Reserve (054-476) to Account 063-241-45300-000-13810.
3. Approve, and authorize the Mayor to execute, Amendment No. 1 to Contract AC-635, by and between the City of San Clemente and PTS Data Center Solutions, Inc, providing for engineering construction support services for the Operational Continuity Data Center. This contract amendment increases the contract amount from \$24,880 to \$40,880, an increase of \$16,000.
4. Approve, and authorize the Mayor to execute, Contract C16-67, by and between the City of San Clemente and Data Specialties, Inc., providing for construction of the Operational Continuity Data Center, in the amount of \$416,918.

M. **Revised Salary Schedule (Adjustment of City Manager's Salary Grade)**

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM WARD, CARRIED 5-0, to adopt Resolution No. 16-66 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADOPTING A REVISED SALARY SCHEDULE AND AMENDING RESOLUTION NO. 16-45 AND ANY OTHER RESOLUTIONS IN CONFLICT THEREWITH.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

D. **Contract Award – Calle Toledo Storm Drain Improvements**

Deputy Public Works Director Rebensdorf reviewed the contents of the Administrative Report; requested that Council adopt a fourth action as follows: "Authorize the City Manager to execute all documents in the name of the City of San Clemente to record an easement on behalf of the City on private property at 1304 Calle Toledo."

Steve Schwartz, San Clemente, questioned and received assurance that City construction contracts require labor & materials and performance bonds, and City contracts for both construction as well as professional services require insurance.

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

1. Approve the plans and specifications for the Calle Toledo Storm Drain Improvements, Project No. 17008.
2. Approve, and authorize the Mayor to execute, Contract C16-64, by and between the City of San Clemente and Lonerock, Inc., providing for construction of the Calle Toledo Storm Drain Improvements, in the amount of \$289,910. Approval of this contract is contingent upon receiving a signed easement from the property owner.
3. Approve, and authorize the Mayor to execute, Amendment No. 1 to Contract AC-683, by and between the City of San Clemente and Stantec, providing for preparation of right-of-way documents. This Amendment increases the contract amount from \$22,300 to \$29,200, an increase of \$6,900.
4. Authorize the City Manager to execute all documents in the name of the City of San Clemente to record an easement on behalf of the City on private property at 1304 Calle Toledo.

L. **Improvements at City-Owned Lot – 1832 N. El Camino Real (North Beach)**

Public Works Director/City Engineer Cameron responded to Council inquiries.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER BROWN, CARRIED 5-0, to approve a FY 2017 supplemental appropriation, from North Beach Funds in the Developers Improvement Fund, in the amount of \$23,000, to Account 037-867-43470, Maintenance of Other Facilities.

7. **PUBLIC HEARINGS**

A. **Zoning Amendment 16-313 – Regulation of Personal, Medical and Commercial Use of Marijuana**

Public Hearing to consider amending the Code of the City of San Clemente, to regulate the personal, medical, and commercial use of marijuana.

MOTION BY MAYOR PRO TEM WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to continue the Public Hearing to the Council meeting of November 1, 2016.

B. **Fiscal Year 2015 Sidewalk Repair Program – Assessment of Costs to Property Owners for Repair of Defective Sidewalks**

Public Hearing to consider assessing charges to applicable properties in the Sidewalk Repair Program for an amount to equal 50% of the City costs to repair defective sidewalks adjacent to identified properties.

Deputy Public Works Director Bonigut reviewed the contents of the Administrative Report and responded to Council inquiries.

Councilmember Brown recused himself from deliberations because he owns property within 500 feet of one of the sidewalks included in the 2015 Sidewalk Repair Program; left the dais at 7:02 p.m.

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

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0-1 (COUNCILMEMBER BROWN RECUSED), to adopt Resolution No. 16-63 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING THE PROPERTY OWNER SHARE OF COSTS FOR REPAIRS PERFORMED IN THE FISCAL YEAR 2015 SIDEWALK REPAIR PROGRAM, PROJECT NO. 19317 AND AUTHORIZING THE FINANCE DIVISION TO INVOICE THOSE COSTS.

Councilmember Brown returned to the dais at 7:06 p.m.

C. **Emergency Shelter Overlay Zone to Implement State Law (SB2) - General Plan Amendment 16-319, Zoning Amendment 16-320, Specific Plan Amendment 16-321**

Public Hearing to consider strategies for complying with State Law “SB2”, the Emergency Shelter Act, as required by court order.

Councilmember Hamm announced that he will recuse from deliberations concerning proposed homeless shelter overlay zoning east of the I-5 because his wife has multiple clients who operate businesses in the Rancho San Clemente Business Park; requested that discussions relating to property east and west of the I-5 be bifurcated so that he can recuse from discussions for which he has a conflict, but participate in discussions for which he is eligible. It was determined that Council would bifurcate the potential overlay sites and that Councilmember Hamm would recuse and leave the Chambers whenever the Rancho San Clemente Business Park option is discussed.

Senior Planner Gregg narrated the portions of a PowerPoint presentation entitled “Draft SB2 Emergency Shelter Zoning & Development Standards” that related to general homeless shelter considerations and properties west of the I-5 that were identified as potential homeless shelter overlay sites; responded to Council inquiries. During the course of her presentation, Ms. Gregg stressed that the issue before Council involves a zone change only and that the City is not building a homeless shelter. Ms. Gregg’s PowerPoint is on file with the City Clerk.

Councilmember Hamm recused and left the Chambers at 7:23 p.m.

Senior Planner Gregg narrated the portion of her PowerPoint presentation entitled “Draft SB2 Emergency Shelter Zoning & Development Standards” that related to the Rancho San Clemente Business Park sub-area and, together with Veronica Tam (consultant who assisted with the City’s Housing Element) responded to Council inquiries. Ms. Gregg’s PowerPoint is on file with the City Clerk.

In response to Council inquiry, City Attorney Smith summarized the legal challenge by the Emergency Shelter Coalition that ultimately led to the court’s determination that the City’s existing Ordinance was non-compliant with SB2; noted that the court ordered that 1) the City conduct a public hearing and introduce a new Ordinance by October 18, 2016, 2) the City adopt the Ordinance (second reading) by November 1, 2016, and 3) the Ordinance take effect by December 20, 2016; noted that the court provided parameters for the new Ordinance.

Council identified benefits of deferring adoption of the Ordinance for 90 days based on the following: 1) A new point-in-time homeless census count is due in January 2017; 2) Two bus routes in the City were discontinued and the Lyft program is a pilot program with a two-year grant; 3) The City currently does not have a hospital; and 4) This evening's public hearing may raise other issues that should be vetted.

Councilmember Hamm returned to the Chambers at 7:38 p.m.

City Attorney Smith explained that the court or plaintiffs in the Emergency Shelter Coalition case have the ability to grant the City an extension to the deadline to adopt the Ordinance, but the City does not have unilateral authority to waive the required deadline; stated that Council could recess to Closed Session to discuss the possible risks associated with a failure to meet the deadline to adopt the Ordinance.

Discussion ensued relative to the possibility of introducing an Ordinance this evening to fulfill the City's legal obligation, while also directing the City Attorney to request a continuance for Ordinance adoption.

Mayor Baker opened the Public Hearing concerning the proposed Calle de Industrias site.

Rey Harju, representing the North Beach Community Association, cited problems associated with homeless individuals; stated that North Beach experiences a high level of pedestrian traffic; asserted that placing a homeless shelter near the Metrolink station will result in North Beach becoming a destination for the homeless; urged Council to not allow a homeless shelter in North Beach.

Thomas Vasquez, San Clemente, stated that his residence is located within the proposed Calle de Industrias sub area; spoke in opposition to a homeless shelter being allowed near his home; identified problems that he has encountered with homeless persons.

Anthony Lafrano, San Clemente, objected to allowing a homeless shelter to be located at the Calle de Industrias location because it is located only 877 feet away from San Clemente High School; asserted that a homeless shelter in the subject area will jeopardize student safety and opined that the Rancho San Clemente Business Park site would be better suited for a shelter than a site located in close proximity to a school.

Pastor Brenda Bos, Christ Lutheran Church, stated that an emergency shelter will allow homeless persons six months in which to regain their independence and continue with their lives; opined that 70 homeless persons is not a great number; expressed a preference for providing

homeless shelter overlays at both the Calle de Industrias and Rancho San Clemente Business Park locations, but opined that the Industrias site is the superior option.

Tyler Johnson, business owner in North Beach, cited problems he has experienced with homeless persons; suggested that the homeless problem has worsened over the last 9-12 months and that a homeless shelter will exacerbate the problem.

Councilmember Hamm left the Chambers at 7:56 p.m.

MEETING RECESSED

Council recessed at 7:56 p.m. and reconvened at 8:12 p.m., with all members present, except Councilmember Hamm.

Mayor Baker invited the Public Hearing to continue on all issues, including the Rancho San Clemente Business Park sub-area.

Kathleen Bruen, San Clemente, expressed regret that a homeless shelter was not provided years ago when it could have been appropriately zoned and planned; noted that residents will be negatively affected by a homeless shelter regardless of where in the City the shelter is located; stated that she resides in Rancho San Clemente and questioned the protections that the City will implement to ensure that quality of life is not negatively affected in the event a homeless shelter comes to fruition.

Pat Brashear, San Clemente, opined that a homeless shelter in the Rancho San Clemente Business Park will drive out businesses, thereby negatively affecting the City's tax base.

Vonne Barnes, Rancho San Clemente Community Association, presented 47 letters from persons who oppose a homeless shelter in the Rancho San Clemente Business Park; suggested that Rancho San Clemente is ill-suited for a homeless shelter because it is located in a fire zone. A copy of Ms. Barnes' PowerPoint is on file with the City Clerk.

Tom Barnes, San Clemente, continued Vonne Barnes' PowerPoint presentation, urging that the City consider the Pico/El Camino Real site as a location for a homeless shelter; noted that the City Yard lot, former skate rink property, and Los Molinos-Rincon site may be appropriate for homeless shelter use; suggested that the Rancho San Clemente Business Park and Calle Industrias sites are deeply flawed.

Scott McGuirk, San Clemente, spoke in opposition to allowing a homeless shelter in Rancho San Clemente, citing safety concerns; stated that he is a mental health professional and is of the opinion that a shelter at the Rancho San Clemente Business Park will not work from a mental health standpoint; stated that his agency is willing to help the City find a strategic solution to the homeless problem.

Thomas Mauriello, attorney representing the Rancho San Clemente Business Park Association, stated that the Rancho San Clemente Business Park is a poor location for a homeless shelter and suggested that superior options are available; suggested that the issue of public transit has not been properly vetted, noting that homeless persons may not possess phones to enable them to utilize the Lyft program; urged Council to consider the Pico site next to the City yard as a possible site for a homeless shelter; recommended that Council declare the City properties identified in the City's existing Ordinance as surplus and then resubmit to the court.

Javier Arnoni, San Clemente, voiced concern with homeless encampments at Pico/Del Cerro, noting that a fire in that location will likely spread to his property in Marblehead Inland; voiced concern that he has called Police Services to evict homeless persons from the subject property, but was advised to contact his homeowners association because it is private property.

Jim Fitzpatrick, San Clemente, voiced concern that camp fires in homeless encampments can start large fires.

Jason Powell, owner of property in the Rancho San Clemente Business Park, described problems he has experienced with homeless persons (theft, break-ins, etc.); stated that he would not have located his business in the Business Park if he had known that a homeless shelter was a possibility; spoke in opposition to allowing a homeless shelter in close proximity to day care centers and schools.

Jennifer Fitzpatrick, President of the Harbor Ridge/Harbor View Estates Community Association, voiced concern that the potential for fire will increase if a homeless shelter becomes a reality; stated that she takes the Metrolink to her place of business on a daily basis and is uncomfortable because of the presence of homeless individuals near the Metrolink station.

Bob Adams, President of the Rancho San Clemente Business Park, stated that the City will jeopardize revenue from the Business Park if a homeless shelter is located in that location; stated that the triangle site and adjacent property (at Amanecer to Del Cerro, north of Pico), totals 10 acres and is

better suited for a homeless shelter because it is not readily visible or located near residences.

William Miller stated that he is a civil engineer; commented that all properties in San Clemente carry seismic risks and hence no site should be eliminated from homeless shelter consideration for seismic reasons; opined that the Rancho San Clemente Business Park is not practical for a homeless shelter because the hilly topography is difficult to navigate on foot; stated that some of the City properties that were originally proposed for possible homeless shelter development should remain as possibilities since they would be the least objectionable to the community.

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

Council noted the possibility of requesting blanket authorization from OCTA and Metrolink to enable Police Services to expeditiously enforce problems involving homeless persons that take place on their properties.

Councilmember Hamm returned to the dais at 9:16 p.m.

Councilmember Hamm left the dais at 9:17 p.m.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0-1 (COUNCILMEMBER HAMM RECUSED) to remove all references to churches from the Ordinance.

Councilmember Hamm returned to the Chambers at 9:27 p.m.

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-1 (COUNCILMEMBER DONCHAK VOTING NOE), to eliminate the Calle de Industrias sub-area from SB2 discussions. **NOTE: Council reconsidered this motion later in the meeting.**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 5-0, to include the City Yard site on Avenida Pico in the emergency shelter overlay. **NOTE: Council reconsidered this motion later in the meeting.**

In response to Staff inquiry, Council clarified that it is not willing to waive discretionary action for homeless shelter development on the City Yard site on Avenida Pico.

Councilmember Hamm left the Chambers at 9:40 p.m.

Councilmember Hamm returned to the Chambers at 9:45 p.m.

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR PRO TEM WARD, CARRIED 5-0, to reconsider the earlier motion to include the City Yard site on Avenida Pico in the emergency shelter overlay.

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-1 (COUNCILMEMBER HAMM VOTING NOE), to reconsider the earlier motion to eliminate the Calle de Industrias sub-area from SB2 discussions.

During the deliberations that followed, Council requested that the City Attorney report on the possible ramifications of the City failing to introduce an Ordinance this evening.

City Attorney Smith responded that a consequence available in SB2 for non-compliance is an injunction against all permitting authority in the City.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER BROWN, CARRIED 4-1 (COUNCILMEMBER DONCHAK VOTING NOE), to rebundle the Planning Commission recommendations to enable all shelter location options in the City to be considered.

Councilmember Hamm left the Chambers at 9:56 p.m.

Council discussed the possibility of introducing a compliant ordinance this evening, while simultaneously seeking approval from the court and opposing counsel for a 90-day extension on the second reading of that ordinance.

MOTION BY MAYOR BAKER, SECOND BY COUNCILMEMBER BROWN, CARRIED 4-0-1 (COUNCILMEMBER HAMM RECUSED), to recess to Closed Session at 10:04 p.m. to discuss the following:

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 30-201400758880

In attendance for the Closed Session were all members of the City Council, City Manager Makshanoff, Assistant City Manager Sund, City Attorney Smith, Cristina Talley (with Best Best & Krieger) and Community Development Director Gallardo-Daly.

MEETING RECONVENED

Council reconvened at 10:23 p.m., with all members present except Councilmember Hamm.

MOTION BY COUNCILMEMBER DONCHAK to approve the below Planning Commission recommendation, with the direction that churches by accessory be removed from the Ordinance, that churches with existing schools and their adjacent parcels be eliminated from the homeless shelter overlay; and that the City Attorney seek to obtain an extension for second reading of the Ordinance to accommodate uncertainties in the City with regard to public transportation, census count and closure of the hospital.

1. Approve the Emergency Shelter Overlay Zone and Development and Operating Standards.
2. Adopt the Initial Study/Negative Declaration, and direct staff to file a Notice of Determination.
3. Adopt Resolution No. 16-64 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING A NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT AND AMENDING THE GENERAL PLAN, RANCHO SAN CLEMENTE AND WEST PICO CORRIDOR SPECIFIC PLANS, TO IMPLEMENT CALIFORNIA GOVERNMENT CODE SECTION 65583 REGARDING SENATE BILL 2 ("SB 2"), THE EMERGENCY SHELTER ACT, CITY FILE NUMBERS GPA 16-319, ZA 16-320 AND SPA 16-321.
4. Introduce Ordinance No. 1634 entitled AN ORDINANCE OF THE CITY OF SAN CLEMENTE, CALIFORNIA TO AMEND SECTION 17.56.100 OF THE MUNICIPAL CODE TO IMPLEMENT SENATE BILL 2 ("SB 2"), THE EMERGENCY SHELTER ACT.

THE ABOVE MOTION DIED FOR LACK OF A SECOND.

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR PRO TEM WARD, CARRIED 3-1-1 (COUNCILMEMBER DONCHAK VOTING NOE AND COUNCILMEMBER HAMM RECUSED), to take the following actions, with the direction that the map and text relating to the Calle de Industrias site be removed from the ordinance and that all references to churches will also be deleted from the Ordinance. Further, that the City Attorney seek to obtain an extension for second reading of the Ordinance to enable Council to refine the Ordinance in light of issues raised this

evening with regard to public transportation, census count and closure of the hospital:

1. Approve the Emergency Shelter Overlay Zone and Development and Operating Standards.
2. Adopt the Initial Study/Negative Declaration, and direct staff to file a Notice of Determination.
3. Adopt Resolution No. 16-64 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING A NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT AND AMENDING THE GENERAL PLAN AND RANCHO SAN CLEMENTE SPECIFIC PLAN, TO IMPLEMENT CALIFORNIA GOVERNMENT CODE SECTION 65583 REGARDING SENATE BILL 2 ("SB 2"), THE EMERGENCY SHELTER ACT, CITY FILE NUMBERS GPA 16-319, ZA 16-320 AND SPA 16-321.
4. Introduce Ordinance No. 1634 entitled AN ORDINANCE OF THE CITY OF SAN CLEMENTE, CALIFORNIA TO AMEND SECTION 17.56.100 OF THE MUNICIPAL CODE TO IMPLEMENT SENATE BILL 2 ("SB 2"), THE EMERGENCY SHELTER ACT.

Councilmember Hamm returned to the Chambers at 10:40 p.m.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **Police Services Proposed "Targeting Reduction Investigation Prevention" (TRIP) Program**

Report from the Chief of Police Services concerning deployment of a specialized enforcement team, entitled Targeting Reduction Investigation Prevention (TRIP).

Lt. Moodie narrated a PowerPoint presentation entitled "Target Reduction Investigation Prevention (T.R.I.P.)" and responded to Council inquiries. A hard copy of Lt. Moodie's PowerPoint is on file with the City Clerk.

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to receive and file the Administrative Report, dated October 18, 2016, which is on file with the City Clerk.

B. Conflict of Interest Code Biennial Update

Report from the City Clerk concerning the Conflict of Interest Code Biennial Update.

City Clerk Baade reviewed the contents of the Administrative Report.

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

1. Adopt Resolution No. 16-65 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING AND ADOPTING AN AMENDED CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974.
2. Introduce Ordinance No. 1635 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTER 2.24 OF THE CODE OF THE CITY OF SAN CLEMENTE RELATING TO THE CITY'S CONFLICT OF INTEREST CODE.

C. Alleged Violation of City Code of Ethics Policy 1202-1

Report from the City Clerk concerning an alleged violation of the City Code of Ethics Policy 1202-1.

Councilmember Hamm recused himself from discussions because he was named in the ethics complaint; left the Chambers at 10:56 p.m.

City Clerk Baade reviewed the contents of the Administrative Report and, together with City Attorney Smith, responded to Council inquiries.

Jim Bieber, San Clemente, reviewed the allegations contained in the complaint; spoke in opposition to the use of City property for campaign purposes; voiced concern that City policy requires Councilmembers to judge whether or not other Councilmembers violated the City's ethics policy; expressed doubt that Councilmember Hamm will be held accountable.

Anthony LaFrano, San Clemente, opined that Councilmember Hamm did not commit an ethics violation; asserted that the complaint is petty and was filed in retaliation for Council's previous action concerning VRBOs (Vacation Rentals by Owners).

During the course of discussion, Council noted that 1) the photograph in question was a still image from a 2014 Around Town episode concerning public safety and, as such, was taken while Councilmember Hamm was conducting official duties, 2) that many candidates have included pictures in their campaign materials that were taken at City facilities or at City events, 3) that Councilmember Hamm was not in uniform in the photograph, and 4) that the City Council does not have enforcement authority over Government Code Section 3206, which prohibits officers from participating in political activities while in uniform.

Council requested that future Council Candidate Handbooks identify images that may not be included in campaign literature.

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0-1 (COUNCILMEMBER HAMM RECUSED), to dismiss the portion of the ethics complaint that alleged violation of Government Code Section 3206.

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR BAKER, CARRIED 4-0-1 (COUNCILMEMBER HAMM RECUSED), to find that an ethics violation did not occur and direct the City Clerk to dismiss the complaint and notify the complainant and the person named in the complaint of that action.

Councilmember Hamm returned to the dais at 11:22 p.m.

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

None.

11. **REPORTS**

A. **Commissions and Committees**

(1). **Concerned Coastal Community Coalition**

Councilmember Donchak reported that the Concerned Coastal Community Coalition will meet in San Clemente on October 19, 2016.

(2) **Orange County Library Update**

Councilmember Donchak reported on her attendance at a recent Orange County Library meeting; noted that San Clemente is currently a donor city and that a subcommittee will be established to set priorities concerning future service levels, facility needs and financial sustainability through the current allocation of policy and Irvine's MOU; stressed the importance of City representation on that subcommittee.

B. **City Manager**

None.

C. **City Attorney**

None.

D. **Council Members**

Family Assistance Ministries (FAM) Hunger Walk

Councilmember Donchak reported on her attendance at the Family Assistance Ministries (FAM) Hunger Walk on October 16, 2016.

Association of California Cities – Orange County (ACC-OC) Tour

Councilmember Brown invited Council to attend the ACC-OC Infrastructure Committee's tour of the Second Harvest Food Bank on October 21, 2016 and tour of the Bowerman Landfill that will take place in November 2016.

Transportation Corridor Agency (TCA) – Request for Proposals (RFP) for Extension of the 241

Mayor Pro Tem Ward reported that the TCA issued an RFP for the completion of an Environmental Impact Report concerning extension of the 241 to the I-5; noted that the report will include an assessment of the impact of extending the 241 to Avenida Pico; stated that the TCA expects to award a contract by January 2017.

San Clemente High School Homecoming Parade

Mayor Baker reported that the San Clemente High School homecoming parade will take place on October 21, 2016 on Avenida Del Mar.

Red Ribbon Week Parade

Mayor Baker reported that the Red Ribbon Week parade will take place on October 24, 2016 on Avenida Del Mar.

City Golf Championship

Mayor Baker announced that Mark Warman won 1st Place and Alex Pak achieved 2nd Place at the City Golf Championship.

Water Conservation Tax Implications

Mayor Baker displayed an article that he co-authored concerning tax implications when implementing water conservation techniques.

12. **RESOLUTIONS/ORDINANCES**

A. **Ordinance No. 1633 (Second Reading) - Code Amendment Concerning Trespass on Private Property**

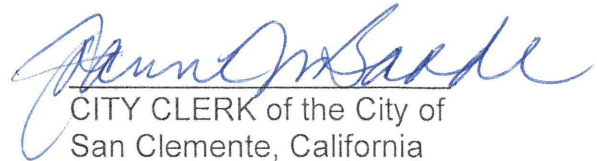
MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR BAKER, CARRIED 5-0 to adopt Ordinance No. 1633 entitled AN ORDINANCE OF THE CITY COUNCIL OF SAN CLEMENTE, CALIFORNIA, AMENDING THE SAN CLEMENTE MUNICIPAL CODE BY ADDING CHAPTER 9.24, SECTIONS 9.24.010 THROUGH 9.24.080, REGARDING TRESPASS ON PRIVATE PROPERTY.

13. ADJOURNMENT

MOTION BY MAYOR BAKER, SECOND BY COUNCILMEMBER BROWN, CARRIED 5-0, to adjourn at 11:30 p.m. in memory of Brian Casagrande. The next Regular City Council Meeting will be held on November 1, 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