

CITY OF SAN CLEMENTE

City Council Minutes

Special and Regular City Council Meeting – November 1, 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 November 1, 2016 at 4:35 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Baker.

PRESENT BROWN, DONCHAK*, WARD, MAYOR BAKER

*Arrived at 5:40 p.m.

ABSENT HAMM

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 MAYOR PRO TEM WARD, CARRIED 3-0 (COUNCILMEMBER DONCHAK AND COUNCILMEMBER HAMM ABSENT), to recess to Closed Session at 4:35 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: 8

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

Case Name: Americare Medservices, Inc. v. City of San Clemente, et al.
Case Number: USDC 8:16-cv-1852 AG

B. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)
Number of potential cases: 1

C. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8
Property: 7,038 sq. ft. vacant land parcel located at 754 Avenida Acapulco
APN: 690-372-03
Agency negotiator: Assistant City Manager
Negotiating parties: City of San Clemente and Frank G. Bassett
Under Negotiation: Price and Terms of Payment

D. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8:
Property: 10,000 sq. ft. vacant land parcel located at 200 Trafalgar Ln.
APN: 629-252-22
Agency Negotiator: Assistant City Manager
Negotiating Parties: City of San Clemente and Robert D. Schumacher
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 one of the items discussed under Item A, and Public Works Director/City Engineer Cameron and Attorney Ed Richards (with Kutak Rock) were in attendance for Item B.

MEETING RECONVENED

Council reconvened for the Regular Council Meeting at 6:09 p.m., with all members present.

INVOCATION

Roger Gales, Pastor, Heritage Christian Church, gave the invocation.

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Ward led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

A. **San Clemente High School Update**

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

B. **Planning Commission Update**

Don Brown, Planning Commission Chair, provided an update on Planning Commission activities, focusing on recent accomplishments, ongoing efforts and future involvements. A hard copy of Mr. Brown's presentation is on file with the City Clerk.

C. **Presentation of Certificate of Achievement for Excellence in Financial Reporting – Jake Rahn, Financial Services Officer**

Mayor Baker presented a Certificate of Achievement for Excellence in Financial Reporting, that was awarded to the City by the Government Finance Officers Association (GFOA), to Jake Rahn, Financial Services Officer.

D. **Friends of the Reserve Commission Update**

Laurie Gooch, Talega Homeowners Association representative to the Friends of the Reserve Commission, provided an update on Reserve activities and events and invited residents to attend the Thanksgiving Hike and Picnic hosted by the Reserve on November 25, 2016.

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

Via Ballena Landslide Repair

Frank Kling, San Clemente, voiced concern that many residents have been displaced for over five years as a result of the Via Ballena landslide; urged that the City implement the plan that was developed during settlement agreement discussions; voiced concern with the delay in repairing the slope and urged that the City expedite matters to enable residents to return to their homes.

William Hughes, San Clemente, recommended that an emergency permit be issued to enable the culvert to be repaired at this time, even though incidental issues remain with regard to the main hillside repair.

Roshy Khalili, San Clemente, expressed concern that her parents have not been able to reside in their home for six years; questioned the cause for the delays and urged that permits be issued to enable the hillside to be remediated; stated that most of the tarp that was installed is torn and suggested that the rains could jeopardize the safety of persons residing on the slope.

Jim Kempton, San Clemente, stressed the urgency of the situation and encouraged expeditious repairs.

Planning Department Staffing/Historic Preservation

Larry Culbertson, Preservation Chair of the San Clemente Historical Society, voiced concern with staffing changes in the Planning Division; requested that the new City Planner have experience in historic preservation.

3. MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BROWN, 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**

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

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 Item D.

A. **City Council Minutes**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve the minutes of the Regular City Council meeting of October 18, 2016.

B. **Receive and file:**

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

1. Minutes of the Regular Coastal Advisory Committee Meeting of September 8, 2016.
2. Minutes of the Regular Study Session of the Planning Commission of October 5, 2016.
3. Minutes of the Adjourned Regular Planning Commission Meeting of October 5, 2016.
4. Minutes of the Regular Zoning Administrator Meeting of October 19, 2016.
5. Minutes of the Adjourned Regular Planning Commission Meeting of October 19, 2016.

C. Warrant Register

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

Wire Transfer Nos. 1563 through 1566 and
Warrant Nos. 536417 through 536584
paid on 10/14/2016, in the amount of\$1,795,868.69

Warrant Nos. 536585 through 536798
paid on 10/21/2016, in the amount of\$3,073,028.49

TOTAL WARRANT REGISTER\$4,868,897.18

Payroll Register

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

Warrant Nos. 533 through 536 and
Automatic Deposit Advises 35598 through 35896
for the period 9/26/16 through 10/9/16,
paid on 10/14/2016, in the amount of \$420,233.77

TOTAL PAYROLL REGISTER \$420,233.77

E. Final Parcel Map 2014-126 – 907 Avenida Pico (Chase Bank)

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

1. Accept on behalf of the City of San Clemente, the water rights as dedicated.
2. Approve Final Parcel Map 2014-126 as it conforms to the requirements set forth in the Subdivision Map Act and the previously approved Tentative Parcel Map.
3. Authorize the Public Works Director/City Engineer to execute the Final Parcel Map.
4. Authorize the City Clerk to execute and submit the Final Parcel Map to the County of Orange for recordation.

F. **Notice of Completion – FY 2016 Major Street Maintenance for Avenida Barcelona, Trafalgar Lane, Arenoso Lane, Linda Lane and Via Mecha**

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

1. Accept the FY 2016 Major Street Maintenance for Avenida Barcelona, Trafalgar Lane, Arenoso Lane, Linda Lane and Via Mecha (Project No. 26301), from the contractor, Palp, Inc., DBA Excel Paving Company.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the street rehabilitation for FY 2016 Major Street Maintenance for Avenida Barcelona, Trafalgar Lane, Arenoso Lane, Linda Lane, and Via Mecha.
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, Palp, Inc., DBA Excel Paving Company.
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 (an increase of \$6,900).

G. **Contract Amendment – Electronic Document Indexing Services**

MOTION BY COUNCILMEMBER BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve, and authorize the Mayor to execute, Amendment No. 4 to Contract C14-56, by and between the City of San Clemente and Maris Imaging Solutions LLC, providing for electronic document indexing services for the City's Building Division. This contract amendment increases the contract amount from \$35,000 to \$60,000, an increase of \$25,000.

H. **Contract Amendment – Temporary Staff Augmentation in the Planning Division**

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

1. Approve a budget transfer in the amount of \$50,472 from Account 001-433-41010-000-00000 (Salaries, Full Time) to Account 001-431-43890-000-00000 (Contractual Services).
2. Approve, and authorize the Mayor to execute, Amendment No. 1 to Contract AC-710, by and between the City of San Clemente and Civic Solutions, providing for a temporary Planning Technician. This contract amendment increases the contract amount from \$25,000 to \$40,486, an increase of \$15,486, and extends the term of the contract through February 15, 2017, or until services are no longer needed.
3. Approve, and authorize the Mayor to execute, Amendment No. 1 to Contract AC-699, by and between the City of San Clemente and Civic Solutions, providing for a temporary Part-Time Planning Assistant. This contract amendment increases the contract amount from \$25,000 to \$59,986, an increase of \$34,986, and extends the term of the contract through March 29, 2017, or until services are no longer needed.

I. **Grant Revenue and Supplemental Appropriation – San Clemente Trolley**

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

1. Accept grant revenue from the Orange County Transportation Authority in the amount of \$542,900 for FY 2017 to Account 019-819-33790-000-00000, Other County Grants.
2. Approve a supplemental appropriation of \$543,100 in the Air Quality Improvement Fund, to Account 019-819-45300-000-00000 for the San Clemente Trolley Project.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

D. Notice of Completion – FY 2015 Sidewalk Repair Program

Councilmember Brown recused himself from deliberations on this item because one of the sidewalk repair projects is located within 500 feet of his residence; left the Chambers at 6:47 p.m.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR BAKER, CARRIED 3-0-1 (COUNCILMEMBER HAMM ABSENT AND COUNCILMEMBER BROWN RECUSING), to:

1. Accept the FY 2015 Sidewalk Repair Program (Project No. 19317), from the contractor, Unique Performance Construction, Inc.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the FY 2015 Sidewalk Repair Program.
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 Unique Performance Construction, 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.

Councilmember Brown returned to the dais at 6:48 p.m.

7. PUBLIC HEARINGS

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

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

City Planner Pechous reviewed the contents of the Administrative Report.

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

MOTION BY MAYOR PRO TEM WARD, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to introduce Ordinance No. 1632 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING TITLE 9 OF THE SAN CLEMENTE MUNICIPAL CODE TO ESTABLISH REASONABLE REGULATIONS OF LIMITED HOME CULTIVATION OF MARIJUANA FOR PERSONAL USE AND APPROVING ZONING AMENDMENT 16-313, AMENDING TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE, TO REGULATE THE PERSONAL, MEDICAL, AND COMMERCIAL USE OF MARIJUANA.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **Building Code Regulations and Local Amendments**

Report from the Community Development Director concerning adoption of building code regulations and local amendments.

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

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

1. Introduce Ordinance No. 1636 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTERS 15.08, 15.12, 15.16, 15.20, 15.21, 15.22, AND 15.23 OF TITLE 15 OF THE SAN CLEMENTE MUNICIPAL CODE ADOPTING BUILDING REGULATIONS.
2. Adopt Resolution No. 16-67 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, SETTING FORTH FINDINGS WITH RESPECT TO LOCAL CONDITIONS WITHIN THE CITY OF SAN CLEMENTE WHICH MAKE CERTAIN MODIFICATIONS AND CHANGES TO THE CALIFORNIA BUILDING CODE, THE CALIFORNIA RESIDENTIAL CODE, THE CALIFORNIA ELECTRICAL CODE, THE CALIFORNIA MECHANICAL CODE, THE CALIFORNIA PLUMBING CODE, THE CALIFORNIA EXISTING BUILDING CODE AND THE CALIFORNIA GREEN BUILDING

STANDARDS CODE REASONABLY NECESSARY FOR VARIOUS OCCUPANCIES.

3. Set the Building Codes for Public Hearing on November 15, 2016 and direct Staff to advertise the Public Hearing as required by State Law.

B. Fire Code Regulations and Local Amendments

Report from the Community Development Director concerning adoption of fire code regulations and local amendments.

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:

1. Introduce Ordinance No. 1637 entitled AN ORDINANCE OF THE CITY COUNCIL OF SAN CLEMENTE AMENDING CHAPTER 8.16 OF THE SAN CLEMENTE MUNICIPAL CODE AND ADOPTING FIRE CODE REGULATIONS FOR THE CITY OF SAN CLEMENTE.
2. Adopt Resolution No. 16-68 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, SETTING FORTH FINDINGS WITH RESPECT TO LOCAL CONDITIONS WITHIN THE CITY OF SAN CLEMENTE WHICH MAKE CERTAIN MODIFICATIONS AND CHANGES TO THE CALIFORNIA FIRE CODE NECESSARY FOR VARIOUS OCCUPANCIES.
3. Set the Fire Code for Public Hearing on November 15, 2016 and direct Staff to advertise the Public Hearing as required by State Law.

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.

City Clerk Baade reviewed the contents of the Administrative Report and responded to Council inquiries.

During the ensuing discussion, Council noted as follows: 1) The photograph referenced in the complaint was not provided in the material submitted by the complainant and could not be located on the website on which the complainant indicated it was posted; and 2) the City does not have enforcement jurisdiction over Orange County Fire Authority (OCFA) regulations or State law.

Jim Bieber, San Clemente, reviewed the allegations contained in the complaint; displayed an excerpt from the OCFA's Personnel and Salary resolution which related to conflict of interest. A hard copy of Mr. Bieber's presentation is on file with the City Clerk.

MOTION BY COUNCILMEMBER BROWN, SECOND BY MAYOR PRO TEM WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to dismiss the complaint.

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

None.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

San Clemente Police Services Online Survey

City Manager Makshanoff reported that a community survey has been posted to the City's website to enable the public to provide confidential input on Police Services.

Council requested that the survey be provided to various groups (e.g., Chamber of Commerce, Senior Center, Downtown Business Association, service clubs, churches, etc.) to facilitate broad community participation in the survey.

C. **City Attorney**

None.

D. **Council Members**

Orange County Transportation Authority (OCTA)

Councilmember Donchak reported that the OCTA contributed \$19.9 million toward San Clemente transportation improvements, exclusive of the freeway improvements; recapped the benefits that the City receives from the OCTA.

Community Engagement Panel (CEP)

Councilmember Brown reported that the next CEP meeting will take place in Dana Point on November 10, 2016.

Halloween

Councilmember Brown thanked the community for a successful Halloween celebration.

Veterans Day Ceremony – Park Semper Fi

Mayor Baker reported that a Veterans Day ceremony will be held on November 5, 2016 at Park Semper Fi, noting that General J. K. Davis (Ret.) will be honored at that event.

San Clemente High School Homecoming Parade and Red Ribbon Parade

Mayor Baker reported that he participated in the San Clemente High School Homecoming Parade and the Red Ribbon Parade.

12. **RESOLUTIONS/ORDINANCES**

A. **Ordinance No. 1634 (Second Reading) – Implementation of State Law (SB2), the Emergency Shelter Act**

Kathleen Bruen, San Clemente, questioned whether proactive measures will be taken to protect the integrity of the Rancho San Clemente Business Park and residential areas in the event a homeless shelter is opened in the area.

Council requested that Staff agendize the results of the homeless population point-in-time study when available to ensure that the City is operating with accurate data and to further enable an assessment of whether the Lyft rideshare program is proving to be the correct solution for public transportation.

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

B. Ordinance No. 1635 (Second Reading) – Conflict of Interest Code


MOTION BY MAYOR BAKER, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to adopt 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.

13. ADJOURNMENT

MOTION BY MAYOR BAKER, SECOND BY COUNCILMEMBER BROWN, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to adjourn at 7:32 p.m. in memory of Lynn Hughes. The next Regular City Council Meeting will be held on November 15, 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