

CITY OF SAN CLEMENTE

City Council Minutes

Regular City Council Meeting – May 16, 2017

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 May 16, 2017 at 5:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Ward.

PRESENT DONCHAK, HAMM, SWARTZ, MAYOR WARD

ABSENT BROWN

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

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to recess to Closed Session at 5:02 p.m. to discuss the following:

A. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION
Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9
Number of potential cases: 2

B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Existing litigation pursuant to Government Code section 54956.9(d)(1)
Number of Cases: 7

Case Name: Sober Network Properties et al. v. City of San Clemente
Case Number: USDC 8:16-cv-00668

Case Name: Emergency Shelter Coalition v. City of San Clemente
Case Number: OCSC 30-201400758880

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

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

Case Name: MemorialCare Services, et al. v. City of San Clemente
Case Number: OCSC 30-2016-00845211 CU-WM-CJC

Case Name: Eric Olson v. City of San Clemente
Case Number: OCSC 30-2017-00916877 CL-JR-CJC

Case Name: Villa San Clemente, LLC v. City of San Clemente
Case Number: OCSC 30-2017-00917422 CU-WM-CJC

C. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION

Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2)

Number of Potential Cases: 1

In attendance for the full Closed Session were all members of the City Council, except Mayor Pro Tem Brown, who was absent, City Manager Makshanoff and Assistant City Manager Sund. City Attorney Smith and Community Development Director Gallardo-Daly were in attendance for Closed Session Items A and C, and Attorney Alan Burns was in attendance for Closed Session Item B.

MEETING RECONVENED

Council reconvened at 6:05 p.m., with all members present, except Mayor Pro Tem Brown, who was absent.

INVOCATION

Emily Quinn, Baha'i Faith Community, gave the invocation.

PLEDGE OF ALLEGIANCE

Councilmember Swartz led the Pledge of Allegiance.

1. SPECIAL PRESENTATIONS**A. Proclamation – Buddy Poppy Days**

Mayor Ward presented a Proclamation to Wayne Greenleaf, San Clemente Veterans of Foreign Wars, declaring May 27-28, 2017 as Buddy Poppy Days.

B. Presentation of Proclamation – National Beach Safety Week

Mayor Ward presented a Proclamation to Ian Burton, Marine Safety Officer, proclaiming May 22-29, 2017, as National Beach Safety Week.

C. City Fiscal Reports

Assistant City Manager Sund narrated a PowerPoint presentation entitled "FY 2017 3RD Quarter Financial Report as of March 31, 2017". A hard copy of Mr. Sund's presentation is on file with the City Clerk.

2. ORAL COMMUNICATIONS (PART 1)**Short Term Lodging Units**

Sherif Amanious, San Clemente, stated that sober living residences assist persons with mental health issues; urged Council to repeal Ordinances 1616 and 1622.

Richard Noble, Palm Springs, read a document (a copy of which is on file with the City Clerk) that promoted sober residences and urged the repeal of Ordinances 1616 and 1622.

Christine Williams reported on her experiences as a case manager in a sober living facility and working with persons with mental illness.

Bahrum Moghadam, San Clemente, urged Council to repeal Ordinances 1616 and 1622 and opined that treatment facilities help patients receive the help they need.

Bernard Oakley, Tustin, stated Ordinances 1616 and 1622 are hateful in nature; urged Council to repeal the Ordinances.

Jacob Bennett, Vista, urged Council to repeal Ordinances 1616 and 1622, noting that treatment facilities save lives.

Thomas Whitten, San Clemente, stated that while there is a need for sober living facilities, Ordinances 1616 and 1622 were designed to limit the proliferation of short-term rental units and protect permanent residents; asserted that businesses should not operate in residential neighborhoods; urged Council to leave Ordinances 1616 and 1622 in place.

3. MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0 (MAYOR PRO TEM BROWN 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 advised that Council did not take any reportable actions during this evening's Closed Session.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to approve the Consent Calendar, with the removal of Items L, M and O.

- A. **City Council Minutes**

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

- (1) Approve the minutes for the Special and Regular City Council Meeting of April 18, 2017.
- (2) Approve the minutes for the Regular City Council minutes of May 2, 2017.

B. Receive and file:

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to receive and file:

- (1) Minutes of the Regular Zoning Administrator Meeting of April 19, 2017.
- (2) Minutes of the Regular Coastal Advisory Committee Meeting of March 9, 2017.

C. Warrant Register

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to approve:

Handwrite No. 540975, paid on 4/28/17,
 Wire Transfers Nos. 1630 through 1633,
 paid on 4/28/17, and Warrant Nos. 540812
 through 540974, paid on 4/28/17, in the amount
 of.....\$ 3,322,879.92

Warrant Nos. 540976 through 541151,
 paid on 5/5/17, in the amount of.....\$ 1,328,125.14

TOTAL WARRANT REGISTER.....\$ 4,651,005.06

Payroll Register

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to approve:

Warrant Nos. 573 through 577, and
 Automatic Deposit Advises 39646 through 39960,
 for the period of 4/10/17 through 4/23/17, paid on
 4/28/17, in the amount of.....\$ 429,842.02

TOTAL PAYROLL REGISTER.....\$ 429,842.02

D. **SB 786 (Mendoza) – Alcoholism or Drug Abuse Recovery or Treatment Facilities: Overconcentration**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to authorize the Mayor to execute a letter to Senator Mendoza in support of SB 786 (Mendoza) - Alcoholism or Drug Abuse Recovery or Treatment Facilities - Overconcentration.

E. **Contract Amendment - 2nd Floor Office Lease, 910 Calle Negocio**

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

1. Approve, and authorize the City Manager to execute, Amendment No. 1 to Contract C12-05, by and between the City of San Clemente and AMMCOR, providing for the lease of 8,264 sq. ft. on the 2nd Floor of the 910 Calle Negocio building.
2. Approve a supplemental appropriation of \$25,300 to Account 006-803-43605 (Broker Commissions) for the payment of the broker commission from the Negocio Debt Service Fund balance.

F. **Notice of Completion – Water Reclamation Plant Building “K” Double Interlock Pre-Action and Aerosol Fire Suppression Systems**

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

1. Accept the Water Reclamation Plant (WRP) Building “K” Double Interlock Pre-Action and Aerosol Fire Suppression Systems, from the contractor, Schmidt Fire Protection, Project No. 25207.
2. Authorize the Mayor to execute, and City Clerk to record, the Notice of Completion for the Water Reclamation Plant (WRP) Building “K” Double Interlock Pre-Action and Aerosol Fire Suppression Systems.
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 Schmidt Fire Protection.

Motion continued on following page

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.

G. Notice of Completion – Phase I of the Highland Light Ductile Iron Pipeline Replacements Project

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

1. Accept the Phase I Highland Ductile Iron Pipeline Replacements from the contractor, GCI Engineering and Construction, Inc.; Project No. 14403.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for Phase I of the Highland Light Ductile Iron Pipeline Replacements Project.
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 GCI Engineering and 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.

H. Notice of Completion – Linda Lane Pump Station Protection

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

1. Accept the Linda Lane Pump Station Protection from the contractor, Wright Construction Engineering Corporation; Project No.16209.
2. Approve a supplemental appropriation in the amount of \$1,100 to Account 054-476-45300-000-16209 from the Sewer Fund Depreciation Reserve.
3. Authorize the Mayor to execute, and City Clerk to record, the Notice of Completion for the Linda Lane Pump Station Protection.

Motion continued on following page

4. 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 Wright Construction Engineering Corporation.
5. Authorize the City Clerk to release the Performance Bond upon receipt of a Warranty Bond in the amount of 25% of the construction cost.

I. **Records Destruction**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to adopt Resolution No. 17-11 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.

J. **Contract Amendment – Planning Division, Temporary Staff Augmentation (Summit Environmental Group)**

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

1. Approve a budget transfer in the amount of \$37,000 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 C16-74, by and between the City of San Clemente and Summit Environmental Group, providing for temporary contract services on an as-needed basis to assist the Planning Division with the Local Coastal Program. This contract amendment increases the contract amount from \$25,000 to \$62,000, an increase of \$37,000.

K. Contract Award – Planning Division, Temporary Staff Augmentation (Sagecrest Planning and Environmental)

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

1. Approve a budget transfer in the amount of \$45,000 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, Contract C17-17, by and between the City of San Clemente and Sagecrest Planning and Environmental, providing for temporary part-time contract services within the Planning Division, in the amount of \$45,000.

N. Contract Award – Purchase of Electricity

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to approve, and authorize the City Manager to execute, Contract C17-19, by and between the City of San Clemente and Calpine Energy Solution, providing for electricity for a two-year term, for an amount not to exceed \$34 per Kilo-watt hour.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

L. Lease Agreement – Bait and Tackle Concession at the City Municipal Pier

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

Scott Shipley, San Clemente, provided an overview of his business model; stated that if the lease agreement is approved by Council, he can open almost immediately; responded to Council inquiries.

MOTION BY COUNCILMEMBER SWARTZ, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to approve, and authorize the City Manager to execute, Contract C17-18, a Lease Agreement, by and between the City of San Clemente and Scott Shipley, providing for the operation of the Bait & Tackle concession on the Municipal Pier with the following modifications to the agreement:

1. Agreement is to make it clear that the agreement is with Scott Shipley as an individual, and not a joint venture as originally proposed.
2. The hours of operation are to be specified.
3. The date of opening is to be specified.
4. A proviso is to be added to indicate that the lease is not transferrable without Council authorization.
5. Seasons and off-seasons are to be delineated.
6. The services to be provided are to be itemized.
7. Agreement is to specify that the sale of fish and tackle merchandise is minor in nature.
8. Agreement is to specify that fishing instructions are not to be provided.
9. Agreement is to specify that catering services/deliveries are prohibited.

M. Initiation of Zoning Amendment – Regulation of Murals on Private Property

In response to Council inquiry, City Planner Gregg reported that the Zoning Amendment to regulate murals on private property will be submitted to the Planning Commission and City Council this year.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to initiate a Zoning Amendment to address regulation of murals on private property.

O. Lease Agreement – North Beach Concession

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

During the course of discussion concerning signage opportunities to attract beach trail users to the concession, Staff noted that A-Frame signs are not permitted in the public right-of-way. Council expressed willingness to consider ideas from the concessionaire to erect signage to attract beach trail users.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to approve, and authorize the City Manager to execute, Contract C17-20, a Lease Agreement, by and between the City of San Clemente and Sand and Sea Restaurant Group, providing for operation of the North Beach concession, with the following conditions:

1. The scope of services in the Agreement is to specify that the concessionaire is responsible for maintaining clean premises surrounding the concession.
2. The concessionaire is not to be granted special events permits beyond that allowed by others.
3. Operations are to be limited to food services. No rentals are to be offered.
4. A proviso is to be added to indicate that the lease is not transferrable without Council authorization.
5. Hours of operation are to be specified.

7. **PUBLIC HEARINGS**

A. **Quade Residence - 404 South La Esperanza (Appeal of Minor Architectural Permit 16-370, and Minor Exception Permit 16-371)**

Public Hearing to consider an appeal of the Zoning Administrator's approval of a 1,176 square foot second-story addition to a legal nonconforming residence, located at 404 South La Esperanza.

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

Mayor Ward opened the Public Hearing.

Erik Quade, Applicant, narrated a PowerPoint presentation entitled "404 S. La Esperanza", and responded to Council inquiries. A hard copy of Mr. Quade's presentation is on file with the City Clerk.

David Buettner, Appellant, narrated a presentation entitled "Appeal of approval of Architectural Permits 16-370 & 16-371 for 404 South La Esperanza"; voiced concern that the project will negatively impact privacy from his rear yard. A hard copy of Mr. Buettner's presentation is on file with the City Clerk.

Keith Howington, San Clemente, opined that the letter provided to Council by the Applicant contains incorrect information concerning average home sizes in the neighborhood; asserted that many neighbors do not support the proposed addition to the Quade residence; urged Council to deny the request.

Susan Howington, San Clemente, urged Council to consider neighbors' concerns and oppose the project.

Patricia Lamont, San Clemente, stated that she lives directly above the Quade residence and is concerned that the proposed project will negatively affect her view; acknowledged that the City does not protect private views, but requested that the City not approve the 2" waiver that would enable her view to be obstructed; urged Council to deny Minor Exception Permit 16-371.

Ann Buettner, San Clemente, stated her property line is 7' from the Quade deck wall; opined that the proposed addition will negatively impact property values and her privacy; voiced concern that the project would threaten slope stability.

Thomas Whiten, San Clemente, suggested that the subject project will negatively impact the quality of life for surrounding neighbors; urged Council to oppose the application.

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

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

1. Adopt Resolution No. 17-12 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, APPROVING MINOR ARCHITECTURAL PERMIT 16-370, QUADE RESIDENCE, A REQUEST TO CONSIDER AN EXPANSION OF A LEGAL NONCONFORMING RESIDENCE LOCATED AT 404 SOUTH LA ESPERANZA, with the notation that the Applicant has the discretion to relocate the upper deck.
2. Deny Minor Exception Permit 16-371. By virtue of this action, the second story of the structure must comply with current setback requirements (and not follow the existing residence's legal nonconforming setback deficiency of 2" on the south side of the structure and 1" on the north side of the structure).

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **Contract Award – Visual Simulations of Potential Toll Road Alignments**

Report from the Deputy Public Works Director concerning a contract award providing for visual simulations of potential Toll Road alignments.

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

Don Kunze, San Clemente, urged Council to oppose the proposed contract for toll road photo simulations.

Brenda Miller, San Clemente, stated residents should be encouraged to utilize local train service to reduce the demand for additional roads; urged Council to approve the contract for photo simulations.

Josh Hershman, San Clemente, stated that he was part of a group in Long Grove, Illinois that stopped a toll road from being constructed through their town and offered his assistance in the City's efforts; urged Council to not approve the contract for photo simulations because the simulations could help the Transportation Corridor Agency.

Eric Liss, San Clemente, offered his assistance in providing 3-D simulations of the proposed toll road alignments as well as apps to be attached to social media.

During the course of discussion, Council provided direction as follows: 1) opined that six images, at a cost of \$27,500, is not acceptable; 2) Requested information concerning the timeline involved in creating the simulations; 3) Expressed interest in how the proposed alignments would connect to high-impact points, especially around the freeway; 4) Determined that the issue should be continued until after the TCA conducts its mobility workshop at Saddleback College on June 5, 2017 and to also enable Mayor Pro Tem Brown to participate in the deliberations.

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

None.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

San Clemente Trolley

Assistant City Manager Sund reported that the San Clemente Trolley will commence service on Memorial Day weekend; displayed a promotional video of the trolley.

C. **City Attorney**

None.

D. **Council Members**

County Library Advisory Board Meeting

Councilmember Donchak reported that she attended the quarterly County Library Advisory Board meeting.

American Red Cross Heroes Luncheon

Mayor Ward reported on her attendance at the American Red Cross Heroes luncheon on May 3, 2017, noting that the following were among the heroes honored:

Bennett Jonas, Lifesaving Award
Officers Jeremy Buraglia and Brandon Koenig, First Responder Award
Captain Steven Concialdi, Lifetime Contribution Award

Jim Johnson Memorial Sports Park Ribbon Cutting

Mayor Ward reported on her attendance at the Jim Johnson Memorial Sports Park Ribbon Cutting event and displayed photographs.

City Accepting Applications for Service Opportunities

Mayor Ward reported that the City is currently accepting applications for the newly-created Public Safety Task Force as well as all standing Commissions and Committees.

12. **RESOLUTIONS/ORDINANCES**

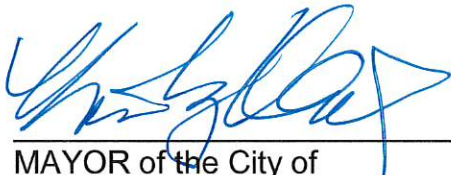
None.

13. **ADJOURNMENT**

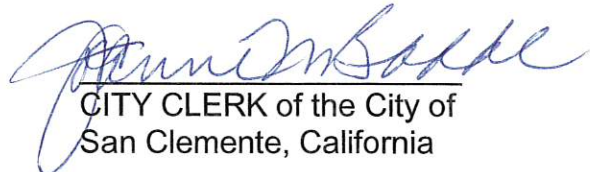
MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to adjourn at 8:32 p.m. to an Adjourned Regular Meeting to be held on May 22, 2017 at 4:00 p.m. for the purpose of considering the FY 2017-18 City Budget. The meeting will take place in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California.

A subsequent Adjourned Regular Meeting will be held on May 30, 2017 at 7:00 p.m. for the purpose of meeting in joint session with the City's Commissions and Committees. The meeting will take place at the San Clemente Golf Course, Wedgewood Banquet Room, located at 150 Avenida Magdalena, San Clemente, California.

In addition to the above, an Adjourned Regular Meeting will be held on May 31, 2017 at 4:00 p.m. The meeting will take place in the Council Chambers, located at 100 Avenida Presidio, San Clemente, for the purpose of interviewing and making appointments of public members to the Public Safety Task Force.



MAYOR of the City of
San Clemente, California



CITY CLERK of the City of
San Clemente, California