

CITY OF SAN CLEMENTE

City Council Minutes

Special and Regular City Council Meeting – September 19, 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 Special Meeting of the San Clemente City Council was called to order on September 19, 2017 at 4:30 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Ward.

PRESENT BROWN, DONCHAK, HAMM, MAYOR WARD

ABSENT SWARTZ

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 MAYOR PRO TEM BROWN, CARRIED 4-0 (COUNCILMEMBER SWARTZ ABSENT), to add the following to the Closed Session agenda, based on the following findings: 1) the need for action came to the attention of the City and the California Joint Powers Insurance Authority over the weekend, and 2) action is needed prior to the next Regular Council Meeting:

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2)
Number of Potential Cases: 1

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM BROWN, CARRIED 4-0 (COUNCILMEMBER SWARTZ ABSENT), to recess to Closed Session at 4:35 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

Closed Session items continued on next page

- C. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Existing litigation pursuant to Government Code section 54956.9(d)(1)
Number of Cases: 4

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

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. Foothill/Eastern Transportation Corridor
Agency and County of Orange
Case Number: 30-2017-00934703-CU-PT-CXC

- D. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code Section
54956.9(d)(2)
Number of Potential Cases: 1

Note: Closed Session Item D was considered after 5:00 p.m. (the regular start time for Closed Sessions).

REGULAR CITY COUNCIL BUSINESS MEETING CONVENED

The Regular Council Meeting of September 19, 2017 convened at 6:08 p.m., with all members present, except Councilmember Swartz, who was absent.

INVOCATION

Jim Davis, Sr. Chaplain, Orange County Sheriff's Department, gave the invocation.

PLEDGE OF ALLEGIANCE

Mayor Ward led the Pledge of Allegiance.

1. SPECIAL PRESENTATIONS**A. Toll Road Update**

City Attorney Smith reported that since Council's last meeting, the City participated in a mandatory settlement conference, explaining that the City presented its demands in opposition to the toll road extension through San Clemente; noted that the case is being prosecuted and that efforts are underway to have the case moved to Los Angeles County; noted that the Orange County Superior Court, where the case was first filed, has categorized the case as complex.

Councilmember Donchak invited the public to participate in a Toll Road Trek on September 23, 2017, noting that it is an educational tool to celebrate the beauty of San Clemente and to explain potential toll road alignments; explained that Joel Robinson, Naturalist, will participate in the event.

B. Presentation of Proclamation – Dyslexia Awareness Month

Deferred.

2. ORAL COMMUNICATIONS (PART 1)**Pier Pride Month**

Mikii Rathmann, San Clemente business owner and member of the Pier Pride organization, explained that the purpose of Pier Pride is to raise money to facilitate improvements to the municipal pier; identified Pier Pride events scheduled for October 2017, and requested that the City proclaim October 2017 as Pier Pride Month.

San Clemente Hospital

Dr. Steve Cullen, San Clemente, voiced concern with an article by Peter Bastone, of the Voice of OC, that asserted that the City Council forced the closure of San Clemente Hospital; reviewed the history of the San Clemente Hospital closure issue, noting that Council tried to save the hospital and provide citizens with access to emergency care.

Dog Beach

Mike Majors, San Clemente, requested that segments of the beach be designated for dog access during specified times; asserted that the majority of dog owners are responsible.

Property Line Markers and Speed Bumps on Avenida Presidio

Lyn Stanley, San Clemente, voiced concern that her neighbor's fence/wall is encroaching onto her property because it was not possible to determine the exact property line due to the lack of property markers; requested that Council take steps to install property line markers on sidewalks; urged that speed bumps be installed on Avenida Presidio to calm traffic.

3. MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER SWARTZ 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 Smith advised that Council did not take any reportable actions during this evening's Closed Session; noted that an item relating to anticipated litigation was added to the Closed Session agenda earlier in the meeting.

6. **CONSENT CALENDAR**

A. **City Council Minutes**

None.

B. **Receive and file:**

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

- (1) Minutes of the Adjourned Regular Planning Commission Meeting of September 6, 2017.

- (2) Minutes of the Regular Golf Course Committee Meeting of July 6, 2017.
- (3) Minutes of the Regular Beaches, Parks and Recreation Commission Meeting of August 8, 2017.

C. Warrant Register

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

Wire Transfers Nos. 1688 through 1693,
and Warrant Nos. 544198 through 544319
paid on 9/1/17, in the amount of.....\$ 6,969,634.02

Wire Transfers Nos. 1694 through 1695,
and Warrant Nos. 544320 through 544504
paid on 9/8/17, in the amount of.....\$ 1,793,383.79

TOTAL WARRANT REGISTER..... \$ 8,763,017.81

Payroll Register

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

Warrant Nos. 617 through 621, and
Automatic Deposit Advises 42623 through 42947
for the period of 8/14/17 through 8/27/17
paid on 9/1/17, in the amount of.....\$ 459,679.29

TOTAL PAYROLL REGISTER.....\$ 459,679.29

D. Notice of Completion – LED Street Light Retrofit

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

- 1. Accept the LED Street Light Retrofit from the contractor, Macadee Electrical Construction, Inc., Project No. 16505.
- 2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the LED Street Light Retrofit.

Action continued on next page

3. Authorize the City Clerk to release the Payment Bond 35 days from the recordation of the Notice of Completion upon verification with the Engineering Division that no liens have been levied against Macadee Electrical 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.

E. **Amendment to Irrevocable Offer to Dedicate Trail Easement and Declaration of Restrictions Related to the Trails in the Marblehead Coastal Development**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM BROWN, CARRIED 4-0 (COUNCILMEMBER SWARTZ ABSENT), to adopt Resolution No. 17-30 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE CITY CLERK TO EXECUTE CERTIFICATES OF ACCEPTANCE AND RECORD AN AMENDMENT TO THE IRREVOCABLE OFFER TO DEDICATE TRAIL EASEMENT AND DECLARATION OF RESTRICTIONS RELATED TO TRAILS IN THE MARBLEHEAD COASTAL DEVELOPMENT.

G. **Initiation of Process to Designate a Parcel of Land for a Public Park (North side of Camino Vera Cruz between Avenida Vista Hermosa and Calle Paradiso – APN 679-152-03)**

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

1. Direct the Planning Commission to initiate amendments to the General Plan, Zoning Map, and Marblehead Inland Specific Plan (MISP) as necessary to designate the 3.31 acre property on the north side of Camino Vera Cruz between Avenida Vista Hermosa and Calle Paradiso as a public park.
2. Direct that the Beaches, Parks, and Recreation Commission consider the types of public parks that are suitable for the subject property and recommend an appropriate update to the Beaches, Parks and Recreation Master Plan.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION**F. Contract Amendment – Temporary Staff Augmentation (Sagecrest Planning + Environmental)**

Larry Culbertson, speaking on behalf of the San Clemente Historical Society, urged that the temporary staff that is retained include one Planner who is trained in historic preservation.

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

1. Approve a budget transfer in the amount of \$60,000 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 No. 17-17, by and between the City of San Clemente and Sagecrest Planning + Environmental, providing for temporary part-time planning services through June 30, 2018 or until services are deemed no longer necessary. This Amendment increases the contract amount from \$45,000 to \$70,000, an increase of \$25,000.

7. PUBLIC HEARINGS**A. Complementary Paratransit Services as Part of the San Clemente Trolley**

Public Hearing to consider a complementary service plan associated with the City of San Clemente's fixed route transit service in conjunction with the San Clemente Trolley funded through the Orange County Transportation Authority (OCTA) and Project V. The complementary paratransit services are for individuals whose disabilities make them unable to use the fixed route.

Public Works Director/City Engineer Bonigut reviewed the contents of the Administrative Report; noted that Council recently received an email from a citizen who was concerned that the trolley lifts may only be able to accommodate wheelchairs, and not other mobility devices, such as the scooter that she utilizes; noted that the issue has been resolved and the citizen indicated that she was successful in using the trolley this past weekend with her scooter.

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

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0 (COUNCILMEMBER SWARTZ ABSENT), to adopt a Complementary Paratransit Plan as required by the Americans with Disabilities Act (ADA) and Orange County Transportation Authority (OCTA) 2017 Project V Grant for fixed-route local transit service (the San Clemente Trolley).

B. Miramar Events Center and Restaurants - Historic Property Preservation and Parking Waiver/Incentive Agreement 17-248 (1700 North El Camino Real)

Continued Public Hearing to consider a request for a Historic Property Preservation and Parking Waiver/Incentive Agreement (HPPPWIA) for the rehabilitation and adaptive reuse of the historic Miramar Theater into a performing arts and event center, and the historic bowling alley into a culinary eatery, in return for a 92 parking space waiver and parking mitigation agreement. The site is located at 1700 North El Camino Real, in the Mixed Use Zoning districts and the Architectural, Coastal Zone and Central Business District Overlays (MU1-A-CZ-CBD).

Council noted that the Public Hearing on this item will be continued to the Council meeting of October 17, 2017.

Mayor Ward opened the Public Hearing.

Larry Culbertson, speaking on behalf of the San Clemente Historical Society, spoke on the importance of incentivizing historic preservation; complimented the proposed project, noting that the traffic study indicates that a problem will not be encountered; urged Council to approve the project.

George Gregory, San Clemente, spoke in opposition to giving parking spaces to the owners of the Miramar Theatre, while the project increases parking demand; opined that the project is too big and patrons will park on neighboring streets.

Gayle Higgins, San Clemente, stated that her home overlooks the Miramar Theatre, noting that she has never seen the beach parking lot near the Miramar to be full, even during holidays; urged Council to waive the parking requirement and approve the project.

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER SWARTZ ABSENT), to continue the Public Hearing to the Council meeting of October 17, 2017.

8. **UNFINISHED BUSINESS**

A. **Water Utility Cost-of-Service Study and Proposition 218 Notification**

Report from the Assistant City Manager concerning the final Water Utility Cost-of-Service Study and Proposition 218 Notification.

Assistant City Manager Sund reviewed the contents of the Administrative Report.

Derek Cahill, San Clemente, requested that the City publish the top ten tips for water conservation.

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

1. Receive and file the final Water Cost-of-Service Fee Study.
2. Approve the Proposition 218 notice to be published for the November 7, 2017 Public Hearing regarding the proposed water rate structure changes.

9. **NEW BUSINESS**

A. **Updated Engineering and Traffic Survey for Posted Speed Limits on Camino Del Rio, Camino De Los Mares and North El Camino Real**

Report from the Public Works Director/City Engineer concerning an updated Engineering and Traffic Survey for posted speed limits on Camino Del Rio, Camino De Los Mares and North El Camino Real.

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

1. Accept the updated Engineering and Traffic Surveys for Camino Del Rio, Camino De Los Mares and North El Camino Real and approve the posted speed limits on these streets accordingly.

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2. Introduce Ordinance No. 1646 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTER 10 OF THE MUNICIPAL CODE CONCERNING SPEED ZONES ON CAMINO DEL RIO.

B. Update on the Road Repair and Accountability Act of 2017 and Amendment to the Fiscal Year 2018 Capital Improvement Program

Report from the Public Works Director/City Engineer concerning the Road Repair and Accountability Act of 2017 and amendment to the Fiscal Year 2018 Capital Improvement Program.

Public Works Director/City Engineer Bonigut reviewed the contents of the Administrative Report.

Derek Cahill, San Clemente, questioned and received clarification that the subject gas tax funds can only be used for road maintenance and rehabilitation, and not for beach sand issues.

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

1. Direct staff to create a new Fund Number 011 titled “Gas Tax Road Maintenance and Rehabilitation Account (RMRA)” or take similar actions to appropriately receive, segregate and track anticipated future State Gas Tax RMRA revenue and expenditures.
2. Accept anticipated Fiscal Year 2018 Gas Tax RMRA revenue of about \$374,000 into the new Gas Tax RMRA Fund, Account 011-000-33535.
3. Accept anticipated Fiscal Year 2018 Gas Tax Loan Repayment revenue of about \$76,000 into the existing Gas Tax 012 Fund.
4. Adopt Resolution No. 17-31 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING THE FISCAL YEAR 2018 CAPITAL IMPROVEMENT PROGRAM TO INCLUDE PUBLIC ALLEY REHABILITATION USING FUNDS FROM THE STATE OF CALIFORNIA ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017 (SB1).
5. Approve a supplemental appropriation of \$374,000 from the Gas Tax RMRA Fund to the Fiscal Year 2018 Alley Rehabilitation Project, Account 011-864-45300.

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

LED Lights (Marblehead Coastal)

Derek Cahill, San Clemente, stated that he lives in Marblehead Inland and his view overlooks the outlet mall; voiced concern that lighting within Marblehead Coastal contains a wide array of colors, which creates light pollution.

Development Management Team

Larry Culbertson, San Clemente Historical Society, voiced concern that the City's Development Management Team (DMT) meetings are not publicly noticed; noted that a project for a vacant lot between two historically significant properties on La Cuesta was considered at a DMT meeting, but noticing was not provided to the public or abutting property owners.

Councilmember Donchak recused herself from discussions because Mr. Culbertson mentioned her property in his comments; left the Chambers at 7:10 p.m.

In response to Council inquiry, Staff explained that State law does not require DMT meetings, which consist of City staff, to be publicly noticed; noted that Council could request that DMT meetings be noticed, if desired; explained that the purpose of DMT meetings is to determine whether a development application is complete.

Council requested that Staff provide a white paper describing the composition, purpose, function, and meeting frequency of the DMT.

Councilmember Donchak returned to the dais at 7:11 p.m.

11. **REPORTS**

A. **Commissions and Committees**

(1) **Consideration of Appointing a Representative and Alternate Representative to the Transportation Corridor Agency (TCA) San Joaquin Hills Board (Mayor Ward)**

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM BROWN, CARRIED 4-0 (COUNCILMEMBER SWARTZ ABSENT), to appoint Councilmember Swartz as the City's representative to the Transportation Corridor Agency San Joaquin Hills Board, and to appoint Mayor Ward as the City's alternate representative.

B. City Manager

None.

C. City Attorney

None.

D. Council Members**Presentations at Council Meeting concerning Extension of HOV Lane on the I-5 and the El Camino Real Overpass Realignment**

Council requested that the Orange County Transportation Authority (OCTA) be requested to give a presentation at a future Council meeting concerning the status of the Project Study Report to extend the I-5 HOV lane from Avenida Pico to the San Diego County line. Council specifically requested that the presentation address alternatives that the OCTA is considering, traffic counts, traffic projections, timing, potential property takings, and how the subject portion of the freeway fits into the long-range transportation plan. Additionally, Council requested a presentation concerning the El Camino Real overpass realignment by either the OCTA and/or CalTrans, as appropriate.

First Responder Night (Hosted by San Clemente High School Football Team)

Councilmember Hamm reported that he attended First Responder Night, which was hosted by the San Clemente High School football team; stated that the event was successful and well attended.

Downtown Business Association

Councilmember Hamm, Council's representative to the Downtown Business Association (DBA), reported that the Association is considering opportunities to expand its events and improve their cost efficiency.

Bob Hayden's 100th Birthday Celebration

Councilmember Donchak reported that Bob Hayden celebrated his 100th birthday last week; conveyed that Mr. Hayden expressed appreciation to the Mayor for issuing a commendation in honor of his birthday.

12. RESOLUTIONS/ORDINANCES**A. Ordinance No. 1645 (Second Reading) – Emergency Shelters**

Councilmember Hamm recused himself from discussion of Ordinance No. 1645, relating to emergency shelters, because his wife has clients that own property within the affected zones; left the Chambers at 7:20 p.m.

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 3-0-1 (COUNCILMEMBER HAMM RECUSING AND COUNCILMEMBER SWARTZ ABSENT), to adopt Ordinance No. 1645 entitled AN ORDINANCE OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING SUBDIVISIONS D.1, D.5, E.1 AND E.4 OF SECTION 17.56.100 OF CHAPTER 17.56, TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO EMERGENCY SHELTERS, PURSUANT TO AN ADDENDUM TO THE PREVIOUSLY CERTIFIED SAN CLEMENTE CENTENNIAL GENERAL PLAN ENVIRONMENTAL IMPACT REPORT (STATE CLEARINGHOUSE NO. 2013041021).

Councilmember Hamm returned to the dais at 7:21 p.m.

13. ADJOURNMENT

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (COUNCILMEMBER SWARTZ ABSENT), to adjourn at 7:40 p.m. The next Regular Council Meeting will be held on October 3, 2017 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