

# CITY OF SAN CLEMENTE

## City Council Minutes

### Special and Regular City Council Meeting – October 3, 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 October 3, 2017 at 4:34 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Ward.

**PRESENT** BROWN, DONCHAK\*, HAMM\*\*, SWARTZ, MAYOR WARD

\* Left meeting at 7:05 p.m.

\*\* Arrived at meeting at 4:40 p.m. and left meeting at 6:50 p.m.

**ABSENT** NONE

**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 SWARTZ, SECOND BY MAYOR PRO TEM BROWN, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to recess to Closed Session at 4:34 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 employees: City Manager

Coastal Animal Services Authority General Manager

Employee Organization: San Clemente City Employees Association

Agency designated representatives: City Manager, Assistant 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: 8

Case Name: Villa San Clemente v. City of San Clemente

Case Number: USDC 8:17-cv-1484

Case Name: MemorialCare Services, et al. v. City of San Clemente

Case Number: OCSC 30-2016-00845211 CU-WM-CJC

Case Name: Jim Bieber v. City of San Clemente, et al.

Case Number: OCSC 30-2017-00906718

Case Name: City of San Clemente v. Foothill/Eastern Transportation Corridor  
Agency and County of Orange

Case Number: 30-2017-00934703-CU-PT-CXC

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

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

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: Emergency Shelter Coalition v. City of San Clemente

Case Number: OCSC 30-201400758880

**REGULAR CITY COUNCIL MEETING CONVENED**

The Regular City Council meeting of October 3, 2017 convened at 6:15 p.m., with all members present.

**INVOCATION**

Chris Smith, Southcoast Church International, gave the invocation.

**PLEDGE OF ALLEGIANCE**

Boy Scout Troop 438 led the Pledge of Allegiance.

1. **Special Presentations.**

A. **Toll Road Update**

City Manager Makshanoff reported on his recent meeting in Sacramento with CalTrans concerning the toll road and other issues; displayed a PowerPoint slide entitled "Public-Proposed Traffic Relief Solutions", which identify 20 ideas currently being studied by the Transportation Corridor Agency (TCA); explained that two of the concepts include connecting SR-241 to the I-15 in Temecula, and double-decking the I-5, but pointed out that no specific information has been provided to date; reviewed the TCA's project timetable, noting that the project's initiation is scheduled for June 2018, technical studies are slated for preparation in 2018-2019, the EIR/EIS process is anticipated to take place in 2020, the final EIR is projected for completion in late 2020, and a decision is anticipated to be made in 2021. A copy of Mr. Makshanoff's PowerPoint is on file with the City Clerk.

Don Kunze, San Clemente, requested additional information about the lawsuit that was filed by the City against the TCA; objected to taxpayer funds being utilized for the lawsuit, and suggested that the City use the public defender for the subject purpose; objected to the use of the City's open space for a toll road; questioned why the City is considering building a new park when its budget for park maintenance has been reduced by 47%.

James Rosen, San Clemente, expressed gratitude to the City for opposing the toll road to preserve the character of San Clemente; stated that some citizens want to help oppose the toll road and requested that citizens and the City work together toward their common goal.

Pamela Joy Glass, San Clemente, spoke in opposition to the toll road and addressed the importance of respecting open space lands.

B. **Wheeler North Artificial Kelp Reef Update**

Patrick Tennant, Senior Manager, Mitigation and Restoration Section, with San Clemente Edison, narrated a PowerPoint presentation concerning plans to expand the Wheeler North artificial kelp reef. A hard copy of Mr. Tennant's PowerPoint, dated October 3, 2017, is on file with the City Clerk.

C. **Pier Pride Proclamation**

Mayor Ward presented a proclamation to Jim Nielsen, of Pier Pride, proclaiming the month of October 2017 as Pier Pride Month.

Mr. Nielsen narrated a PowerPoint presentation entitled "Pier Pride – Preserving a Uniquely San Clemente Experience."

*Councilmember Hamm left the meeting at 6:50 p.m.*

D. **Hunger Walk Proclamation**

Mayor Ward presented a proclamation to Mary Gray Perdue, Family Assistance Ministries, proclaiming October 15, 2017 as a day set apart for the Hunger Walk.

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

**Open Space Retention/Toll Road**

Wayne Eggleston, San Clemente, explained that Save San Clemente Open Space was formed in 2007 for the purpose of preserving San Clemente's open space; noted that Save San Clemente Open Space was active in three ballot measures in the City.

Charles Mann, Save San Clemente Open Space, presented a \$5,000 check to the City to help fund an advisory ballot measure to ascertain voter sentiment toward the development of a toll road through the City.

**San Clemente Hospital**

Carol Wilson, San Clemente, thanked Council for its efforts to bring a hospital to San Clemente; expressed concerns relating to the lack of a hospital and encouraged Council to continue its efforts.

*Councilmember Donchak left the meeting at 7:05 p.m.*

Michael Clark, San Clemente, expressed gratitude to Council for placing the health and safety of the community first; conveyed support for the City's action to rezone the hospital property to require an emergency room.

Debbie Weddle, Laguna Niguel, stated she was employed by San Clemente Hospital as a Registered Nurse for 32 years; stated that the hospital saved many lives during her tenure with the hospital, noting that many would not have survived transport to Mission Hospital.

Dr. Steve Cullen, San Clemente, explained that a person cannot legally die while being transported in an ambulance and hence the number of persons who do not survive medical transport is not published; stated that the Orange County EMS website publishes the percentage of time that emergency response is provided within acceptable standards, but noted that the acceptable response time in San Clemente is 25 minutes because it is considered to be rural; urged Council to seek actual response times.

Rev. Thomas Kugler, San Clemente, expressed appreciation to Council for its efforts to bring a hospital back to San Clemente; urged citizens to write to Governor Brown to urge him to sign SB 687 (Skinner).

Warren Vidrine, San Clemente, commented on the importance of obtaining a hospital for San Clemente and noted that he previously suggested that the property at the corner of Avenida La Pata and Avenida Vista Hermosa be considered as a hospital site.

Dr. Gus Gialamus, San Clemente, noted the negative effects that have occurred since the closure of San Clemente Hospital, noting that some persons may have survived if a local hospital had been available; spoke on the importance of a hospital with an emergency room for San Clemente; urged support for SB 687 that will allow the Attorney General input as to whether a not-for-profit hospital can close its doors in a community it committed to serve; noted that SB 687 is retroactive.

3. MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND 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**

**Villa San Clemente v. City of San Clemente**

City Attorney Smith noted that no reportable action occurred during this evening's Closed Session; advised that he was not present during Council's consideration of the case entitled Villa San Clemente v. City of San Clemente because Best, Best & Krieger (BBK) had a prior representation that disqualified it from counseling the City on that matter; noted that the City retained alternative legal counsel that was present during Council's consideration of that case.

6. **CONSENT CALENDAR**

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to approve the Consent Calendar with the removal of Items D, I and J.

A. **City Council Minutes**

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to approve the following City Council minutes:

(1) Special and Regular City Council Meeting minutes of September 5, 2017.

(2) Special and Regular City Council Meeting minutes of September 19, 2017.

B. MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to receive and file:

(1) Regular Zoning Administrator Meeting minutes of September 6, 2017.

(2) Planning Commission Study Session minutes of September 20, 2017.

(3) Regular Planning Commission Meeting minutes of September 20, 2017.

C. **Warrant Register**

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to approve the following:

Wire Transfers Nos. 1696 through 1701 and Warrant Nos. 544505 through 544685, paid on 9/15/17, in the amount of.....\$1,227,901.45

Wire Transfers Nos. 1702 through 1703 and Warrant Nos. 544686 through 544837, paid on 9/22/17, in the amount of.....\$1,608,541.81

TOTAL WARRANT REGISTER...\$2,836,443.26

**Payroll Register**

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to approve the following:

Warrant Nos. 622 through 625, and Automatic Deposit Advises 42948 through 43266, for the period 8/28/17 through 9/10/17, paid on 9/15/17, in the amount of.....\$ 436,675.00

TOTAL PAYROLL REGISTER.....\$ 436,675.00

E. **Release of Substitute Security as Required Per Assignment, Assumption, Hold Harmless, and Release Agreements Relative to Tracts 16211, 16212, and 16282 – The Reserve South, East, and North at Forster Highlands**

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to adopt Resolution No. 17-32 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING RELEASE OF SUBSTITUTE SECURITY AS REQUIRED PER ASSIGNMENT, ASSUMPTION, HOLD HARMLESS, AND RELEASE AGREEMENTS RELATIVE TO TRACTS 16211, 16212, AND 16282, THE RESERVE SOUTH, EAST, AND NORTH AT FORSTER HIGHLANDS.

F. **Contract Award – Water Reclamation Plant (WRP) Outfall Discharge Piping Repair**

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to:

1. Approve the plans and specifications for the Water Reclamation Plant (WRP) Piping Discharge Repair, Project No. 28208.
2. Approve an appropriation of \$287,500 to Account 054-476-43420-000-28208.
3. Approve, and authorize the City Clerk to execute, Contract C17-41, by and between the City of San Clemente and Newest Construction Company, providing for the WRP Outfall Discharge Piping Repair, in the amount of \$212,220.

G. **Replacement of Fleet Vehicle Numbers 986, 1014, and 1020**

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to approve the purchase of three vehicles from Connell Chevrolet to replace Fleet Vehicle Numbers 986, 1014, and 1020.

H. **Aquatics Partnership Application – San Clemente Water Polo**

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to approve Junior Partnership status for the San Clemente Water Polo Club with a two-year agreement.

K. **Equipment Purchase/Bid Award - Storage Area Network (SAN) Equipment**

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to approve the purchase of Storage Area Network (SAN) equipment (SAN) in the amount of \$117,215.50 from CDW-G LLC.



**ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION**

**D. Use of City Pier by Pier Pride for Fishing Derby**

Jim Nielsen, PierPride, reported that PierPride plans to conduct a fishing derby on the pier in conjunction with Fish for Life; explained that Fish for Life takes special needs children on boat rides; urged that Council waive all permissible fees associated with the event.

Jim Holden, Fish for Life, provided an overview of the Fishing Derby, focusing on the day's events and logistics.

During the course of discussion, Council noted that a global City policy concerning events on the Pier will be considered at a future meeting.

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT), to approve the one-time use of the City Pier on October 21, 2017 for the Pier Pride Fish for Life Derby event and to waive all fees that have not already been paid for the event.

**I. Public Art on City-Owned Facilities**

Following discussion, MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to approve the Public Art on City-Owned Property procedure, as set forth in the Administrative Report, dated October 3, 2017, which is on file with the City Clerk.

**J. Use of El Camino Real Lot for San Clemente Oktoberfest Special Event and Fee Approval**

Christy Sain, San Clemente, stated that she is employed at Casino San Clemente; voiced concern that the Oktoberfest will negatively impact weddings that are booked the full weekend of the event; voiced concern that the Oktoberfest stage is aimed toward the Casino which will transmit sound; noted that the Oktoberfest will also impact parking and urged that the event be conducted at an alternative location, such as the outlet mall.

Jared and Kristen Ruth, San Clemente, stated that they started the Oktoberfest event five years ago for the purpose of providing a fun event for the community; urged that this year's Oktoberfest be permitted at North Beach, noting that they are willing to work with others to minimize impacts; expressed willingness to relocate the stage and to schedule the live music

to minimize impacts; noted that event proceeds will benefit the Junior Woman's Club.

Tyler Johnson, Board of the North Beach Community Association, stated that people in North Beach want entertainment, eateries and events; stated that the El Camino Real lot in North Beach is well suited for Oktoberfest; urged that a compromise be reached between the managements of the Casino and Oktoberfest and urged that Council approve the event.

Jill Watson, San Clemente, stated that she is the Venue Manager of the Casino; urged that the Oktoberfest be relocated to another site, pointing out that the event will conflict with three weddings planned at the Casino the weekend of the Oktoberfest; stated that parking will be impacted and voiced concern that the live entertainment from Oktoberfest will be heard at the Rock Garden, where couples take their wedding vows.

During the course of discussion, Council requested that Staff attempt to coordinate parking to provide a buffer between Oktoberfest visitors and visitors to other locations.

**MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT) to:**

1. Approve the one-time use of the lot located at 1832 N. El Camino Real for the 2017 San Clemente Oktoberfest event at an hourly rate of \$65 per hour.
2. Approve a waiver of the rental fees of the lot associated with the load-in and load-out of event supplies in an amount not to exceed \$910.
3. Direct Staff to work to minimize impacts of the Oktoberfest on the Casino.
4. Authorize the San Clemente Trolley to operate throughout the City the day of the Oktoberfest to potentially offset impacts to the area at a cost of \$1,500.

7. **PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **Compliance with AB 2299, SB 1069, and AB 2406: Accessory Dwelling Units and Junior Accessory Dwelling Units**

Report from the Community Development Director concerning compliance with AB 2299, SB 1069, and AB 2406, relating to accessory dwelling units and junior accessory dwelling units.

Associate Planner Wright narrated a PowerPoint presentation entitled “New State Laws: Accessory Dwelling Units and Junior Accessory Dwelling Units” and, together with Utilities Director Rebensdorf, responded to Council inquiries. A hard copy of Mr. Wright’s presentation, dated October 3, 2017, is on file with the City Clerk.

During the course of discussion, it was noted that Staff will ensure that a Code amendment to update the City’s Accessory Dwelling Unit regulations is consistent with the City’s Policy concerning Short-Term Lodging Units (STLUs).

Larry Culbertson, San Clemente, voiced concern that the State is forcing the City to allow higher density and urged that Council impose restrictions to the maximum extent allowed by State law; recommended that Council allocate funds to study traffic, sewer and water impacts, or at a minimum, allocate funds solely for a traffic flow analysis.

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM ABSENT), to direct Staff to initiate Municipal Code amendments to comply with AB 2299, with the caveat that a study be conducted, at a cost of \$10,000, to determine whether circulation and/or traffic impacts will result if more units are created in the area west of the I-5. If the study determines that impacts will result from compliance with AB 2299, Staff is to return to Council with recommended restrictions.

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 2-1 (MAYOR WARD VOTING NOE AND COUNCILMEMBERS DONCHAK AND HAMM ABSENT), to initiate Municipal Code amendments for the regulation of Junior Accessory Dwelling Units according to State law Assembly Bill 2406.

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

None.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

None.

C. **City Attorney**

None.

D. **Council Members**

**San Clemente Hospital**

Councilmember Swartz stated that Councilmember Hamm and he comprise a subcommittee to seek resolution on the San Clemente Hospital issue; urged citizens to encourage the Governor to sign SB 687 (Skinner).

**Seafest**

Mayor Ward reported on the success of Seafest, which was held on October 1, 2017.

**San Clemente Carnival/Attendance at Marine Events/City Coin**

Mayor Pro Tem Brown stated that the City Carnival will take place on October 12-15, 2017 at Vista Hermosa Sports Park; reported on his attendance at the following Marine events: 1) a ceremony to commemorate the 75<sup>th</sup> Anniversary of the founding of Camp Pendleton, 2) the 1<sup>st</sup> Marine Division Appreciation Reception, and 3) John Wayne Day celebration; presented the newly minted City coin.

12. **RESOLUTIONS/ORDINANCES**

A. **Ordinance No. 1646 (Second Reading) – Speed Zones on Camino Del Rio**

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM VOTING NOE), to adopt 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.

13. **ADJOURNMENT**

MOTION BY MAYOR PRO TEM BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBERS DONCHAK AND HAMM VOTING NOE), to adjourn at 9:15 p.m., in remembrance of Robert Limberg and in honor of the victims of the shooting tragedy in Las Vegas (including Colby Jackson, an Orange County EMT, who was wounded in the attack) to an Adjourned Regular Meeting to be held on October 10, 2017 at 5:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, for the purpose of considering adoption of the 2013-2021 Housing Element.

The next Regular Council Meeting will be held on October 17, 2017 in the Council Chambers. Closed Session items will be considered at 5:00 p.m. The Regular Business Meeting will commence at 6:00 p.m.

  
CITY CLERK of the City of  
San Clemente, California

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MAYOR of the City of  
San Clemente, California