

# CITY OF SAN CLEMENTE

## City Council Minutes

### Special and Regular City Council Meeting – November 21, 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 and Regular Meeting of the San Clemente City Council was called to order on November 21, 2017 at 4:30 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 HAMM, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to recess to Closed Session at 4:32 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: 6

Case Name: Villa San Clemente, LLC 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: City of San Clemente v. Foothill/Eastern Transportation Corridor Agency and County of Orange  
Case Number: 30-2017-00934703-CU-PT-CXC

Case Name: Jim Bieber v. City of San Clemente, et al.  
Case Number: OCSC 30-2017-00906718

*Closed Session items continued on next page*

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

Case Name: Capistrano Shores, Inc. v. City of San Clemente  
Case Numbers: OCSC 30-2014-00709987 and 30-2014-00726889

- B. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS** - Pursuant to Government Code Section 54956.8  
Property: 1 Acre Vacant Land Parcel North of the Northeast Corner of Avenida Fabricante and Calle Extremo, APN # 690-661-09  
Agency Negotiator: Erik Sund, Assistant City Manager  
Negotiating Parties: City of San Clemente and Glaukos Corporation  
Under Negotiation: Price and Terms of Payment for Purchase

### **REGULAR CITY COUNCIL MEETING CONVENED**

The Regular City Council Meeting of November 21, 2017 convened at 6:10 p.m., with all members present.

### **INVOCATION**

Mark Boud, Senior Minister, Church of Jesus Christ of Latter-day Saints, gave the invocation.

### **PLEDGE OF ALLEGIANCE**

Councilmember Hamm led the Pledge of Allegiance.

### **1. SPECIAL PRESENTATIONS**

#### **A. Toll Road Update**

City Attorney Smith announced that clean-up amendments (General Plan, Specific Plan, etc.) will soon be agendized for Council consideration, noting that the amendments will delete reference to right-of-way for the 241 toll road through San Clemente because those designations are now impossible due to the settlement that was entered into between the TCA, Surfrider, et al.

City Attorney Smith reported that the City filed a motion to have its toll road case relocated to a neutral county, noting that the court subsequently changed the venue of the case to the Riverside Superior Court.

Mark McGuire, San Clemente, reported on his meeting with Michael Kramen, Chief Executive Officer of the Transportation Corridor Agencies (TCA); advised that he learned that if Alignment 14 is pursued, the TCA proposes to connect the toll road to the I-5 through four express lanes (two in each direction) in the middle of the I-5; stated that the proposal would involve widening the I-5 by four lanes from the area south of Avenida Pico and continuing to Basilone Road, thereby necessitating property takings.

Council requested that the TCA's rendering for Alignment 14 be added to the City's website.

**B. San Clemente High School Campus Report**

This item was deferred to the City Council meeting of December 5, 2017.

**C. Richard and Donna O'Neill Land Conservancy Update**

Laurie Gooch, Talega Homeowners Association representative to the Richard and Donna O'Neill Land Conservancy, provided an overview of Reserve activities and programs.

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

**Request for Removal of City Tree**

Nancy May, San Clemente, requested that the City-owned camphor tree at the front of her property be removed, due to the damage that it is causing and her liability concerns; stated that City staff has indicated willingness to make some repairs to the tree and prune the roots, but opined that such action is inadequate; requested that the City provide assurance that it will assume liability for the tree if it is not removed.

**Bicycle Drive to Benefit Children of the Boys and Girls Club**

George Gregory, San Clemente, reported on the sixth annual bicycle drive to benefit children of the Boys and Girls Club; commented on the success of the program and encouraged public participation.

- 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 no reportable action was taken during this evening's Closed Session; noted that the Villa San Clemente case, that was listed on the agenda, was not discussed.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to approve the Consent Calendar, with the removal of Item 6-H.

A. **City Council Minutes**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to approve the Special and Regular City Council Minutes of November 7, 2017.

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

- (1) Coastal Advisory Committee Regular Meeting minutes of August 10, 2017, September 14, 2017 and October 12, 2017.
- (2) Human Affairs Committee Special Meeting minutes of October 10, 2017.
- (3) Planning Commission Regular Meeting minutes of November 8, 2017.
- (4) Planning Commission Study Session minutes of November 8, 2017.
- (5) Zoning Administrator Meeting minutes of November 8, 2017.

C. **Warrant Register**

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

|  |                |
|--|----------------|
| Wire Transfers Nos. 1725 through 1728, and Warrant Nos. 545668 through 545898, paid on 11/3/17.....                          | \$1,137,147.12 |
| Handwrite No. 546069 and Wire Transfers Nos. 1729 through 1732 and Warrant Nos. 545899 through 546068, paid on 11/10/17..... | \$2,569,987.35 |

TOTAL WARRANT REGISTER.....\$3,707,134.47

**Payroll Register**

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

Warrant Nos. 636 through 638 and Automatic Deposit Advises 44172 through 44471 for the period 10/23/17 through 11/5/17, paid on 11/10/17.....\$ 430,188.22

TOTAL PAYROLL REGISTER.....\$ 430,188.22

**D. Notice of Completion - Highland Light Ductile Iron Pipeline Replacements**

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

1. Accept the Highland Light Ductile Iron Pipeline Replacements Phase II, Project No. 14403, from the contractor, Gwinco Construction and Engineering, Inc.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for Highland Light Ductile Iron Pipeline Replacements Phase II.
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 Gwinco Construction and Engineering, 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. Contract Amendment - As-Needed Geotechnical Services**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to approve, and authorize the Mayor to execute, Amendment No. 2 to Contract AC-672, by and between the City of San Clemente and LGC Geotechnical, Inc., providing for as-needed geotechnical services. This contract extends the term of the contract to June 30, 2018 and increases the total contract amount from \$125,000 to \$225,000 (an increase of \$100,000).

**F. Notice of Completion - Avenida Del Presidente Waterline Replacement**

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

1. Authorize the transfer of \$41,479 from the Storm Drain Depreciation Fund to Account 052-466-45300-000-16405.
2. Accept the Avenida Del Presidente Waterline Replacement, Project No. 16405, from the contractor, Ferreira Construction, Inc.
3. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the Avenida Del Presidente Waterline Replacement project.
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 Ferreira Construction, Inc.
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.

**G. Contract Award - Community Development Parking Lot Rehabilitation and Americans with Disabilities Act (ADA) Improvements**

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

1. Approve the plans and specifications for the Community Development Parking Lot Rehabilitation, Project No. 14328, and ADA Improvements, Project No. 24801.
2. Approve, and authorize the Mayor to execute, Contract C17-52 by and between the City of San Clemente and Horizons Construction Co. Int'l, Inc., providing for the rehabilitation of the Community Development Parking Lot and ADA Improvements, in the amount of \$382,256.70.
3. Approve a supplemental appropriation of \$255,000 from the Street Improvement Fund undesignated fund balance to Account 014-811-45300-000-14328.

**I. Designation of Legal Fees**

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

1. Approve the estimated costs for Transportation Corridor Agency Legal Services as noted in the Administrative Report, dated November 21, 2017, which is on file with the City Clerk.
2. Approve a supplemental appropriation from the General Fund's Unassigned Fund Balance in the amount of \$325,000 to Other Legal Services, Account 001-203-43635-000-00000.

**ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION****H. Initiation of Zoning Amendment – Regulation of Short-Term Lodging Units (STLU); STLU Ordinance Review**

Anthony Lafrano, San Clemente, asserted that neighborhoods should not be used as hotel rooms; opined that short-term lodging units represent a poor business model and unacceptable retirement plan; stated the City should spend money on lawsuits when quality of life is at stake and urged Council to not modify its short-term lodging unit ordinances.

Steve Cortes, Anaheim Hills, stated he owns property on Avenida Palizada; reported that he purchased his property with the intent of living in it when he retires; stated that he rents to families six or seven weeks a year, noting that his property has four parking spaces, his renters patronize local businesses, and the City receives transient occupancy tax revenue; suggested that his property be included in the area in which STLUs are allowed.

T. J. Orr, San Clemente, stated that he rents a studio apartment that is located at the rear of his property, while he resides in the main house; opined that owner-occupied properties are less likely to experience problem renters; stated that he needs the income from the rental for his retirement and urged that a 10-year amortization period be implemented.

Bill Christian, Pasadena, stated that he purchased his rental property in San Clemente six years ago; stated that he wants to move to the San Clemente property, but is still employed; stated he is selective about tenants and can only keep the property if it can be rented; spoke in support of a ten-year amortization period.

Bernie Wohlfarth, San Clemente, urged Council to retain existing Code provisions relating to STLUs; urged Council to continue to protect neighborhoods from businesses that bring traffic, noise, second-hand smoke, trash, etc.; opposed an extension of the amortization period and encouraged Council to fight the lawsuit to retain quality of life.

Susan Nelson, San Clemente, cited nuisances associated with short-term renters; encouraged Council to not extend the amortization period and to retain the existing Ordinances as written.

Tricia Mading, San Clemente, spoke in opposition to an extension of the amortization period, noting the negative impacts that short-term lodging units have on neighbors; urged retention of the existing ordinance.

Joe Janis, San Clemente, disagreed with the findings of the Administrative Report and utilized a PowerPoint presentation to demonstrate complaints and responses which he stated represents a 100% Code Enforcement failure rate; urged Council to fight the lawsuit to defend citizen sentiment against STLUs. A hard copy of Mr. Janis' PowerPoint is on file with the City Clerk.

Vickie Janis, San Clemente, displayed photographs that demonstrated the effect of STLU parking on neighborhood streets, which are on file with the City Clerk; urged Council to protect the health and safety of neighborhoods and to enforce zoning laws.

Ed Efron, San Clemente, stated that he lives next door to a vacation rental; described the nuisances that he experiences and asserted that Code Enforcement is not effective.

Mark McGuire, San Clemente, suggested that the old skate rink and self storage area in North Beach be contemplated as areas in which STLUs may be allowed; encouraged Council to find appropriate locations for STLUs, because the California Coastal Commission will likely be partial toward allowing STLUs; opposed an extension of the amortization period.

Kristi Dassonville, San Clemente, opined that STLUs are a business and asserted that single-family housing should not be used as transient housing; explained nuisances that she has experienced with STLUs and pointed out that weddings and events take place in STLUs.



Chris Thornburg, San Clemente, cited nuisances that he experienced from an STLU that subsequently had its license revoked; noted that in addition to nuisances caused by the renters themselves, the clean-up crews that prepare the properties for the next renter cause parking problems; noted that Code Enforcement staff was unable to respond to most complaints due to inadequate staffing levels and competing priorities.

Wayne Eggleston, San Clemente, stated that quality of life issues are worth fighting for and encouraged Council to defend residents; spoke in opposition to the commercialization of single-family neighborhoods.

Jim Laurent, San Clemente, stated that the STLU next door to him lost its license because of parking, as opposed to other nuisances that it created; questioned why the City is revisiting this issue and urged Council to retain Code provisions as written.

Joseph Giles, San Clemente, stated he purchased his home in San Clemente knowing that the STLU near his property had a two-year amortization; stated that the current Ordinance is good and urged Council to stay the course.

The following persons did not wish to speak, but provided comments on their speaker cards as follows:

Chad Nelson, San Clemente  
Opposed extension of the amortization period  
Opposed the proposed parking amendment

Monica Burick, San Clemente  
Opposed proposal  
Opposed extension of the amortization period

Jennifer Gillette, San Clemente  
Opposed proposal  
Opposed extension of the amortization period  
Opposed a change in parking

Wade Thompson, San Clemente  
Opposed extension of the amortization period  
Urged retention of the current ordinance

Tish Colburn, San Clemente  
Urged retention of the current regulations  
Opposed extension of the amortization period

Mike Boshier, San Clemente  
Opposed to proposed amendment  
Opposed extension of the amortization period  
Urged retention of existing parking regulations

Lu Bevenge, San Clemente  
Urged Council to put residents first  
Opposed extension of the amortization period

Debbie Porter, San Clemente  
Opposed extension of the amortization period  
Urged retention of existing parking regulations

Jeff Grant, San Clemente  
Opposed extension of the amortization period

Deb Jackson, San Clemente  
Opposed proposal  
Opposed extension of the amortization period  
Urged retention of parking regulations

Following discussion, MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to initiate a Zoning Ordinance Amendment to consider proposed revisions regarding the regulation of short-term lodging units and refer this item to the Planning Commission to provide a recommendation to the Council, with very specific guidelines for the Planning Commission as follows:

1. There are to be no proposed or discussed changes to Ordinances Nos. 1622 and 1623 in relation to the Residential Low zone.
2. *STLU On-Street Parking*. A parking permit process is to be initiated in all STLU zones.
3. *STAR property manager*. A 300' distance requirement between short-term apartment rentals (STARS) is to be incorporated and maintained.
4. *Modifications to the STLU overlay*. No areas outside the areas indicated on the map identified in Attachment 2 to the Administrative Report are to be considered for STLUs, but a reduction in areas may be considered. No increase to the maximum 20% density limit shall be considered. Consideration is to be given as to whether Buena Vista should be included in the STLU zoning boundaries in light of the parking situation.

5. *Allowances for extended amortization.* A maximum total amortization of 10 years shall be permitted for STLUs with clean records that are located in the medium and high density zones. City legal staff is to address non-utilized STLU permits as they relate to "use it or lose it".

7. **PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **City Design Immunity Policy No. 801-2 and Municipal Code Modifications to Reflect the New City Position of Utilities Director**

Report from the Public Works Director/City Engineer concerning the possibility of updating City Design Immunity Policy No. 801-2 and amending the Municipal Code to reflect the new City position of Utilities Director.

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

1. Approve and adopt updated City Policy No. 801-2, entitled "Design Immunity".
2. Introduce Ordinance No. 1648 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTERS 2.20, 2.24, 13.04, 13.12, 13.24, 13.32, 13.34, 13.40, AND 13.44 OF THE MUNICIPAL CODE OF THE CITY OF SAN CLEMENTE TO ASSIGN AUTHORITIES TO THE NEW UTILITIES DIRECTOR POSITION.

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

None.

11. **REPORTS**

A. **Commissions and Committees**

(1) **City Representative to Orange County Mosquito and Vector Control District Board of Trustees**

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to direct the City Clerk to advertise and solicit applications from San Clemente registered voters to fill the vacancy for the City representative on the Orange County Mosquito and Vector Control District Board of Trustees for a two-year term. Further, to schedule interviews to occur at the Council meeting of December 19, 2017 at 4:30 p.m.

B. **City Manager**

None.

C. **City Attorney**

None.

D. **Council Members**

**Councilmember Donchak - Announcement to Not Seek Re-Election**

Councilmember Donchak announced that she will not seek re-election to the City Council when her term expires in 2018; explained the reasons that prompted her to pursue election to Council; noted the importance of continuity and orderly transition to successful governance and recommended that her decision to not seek re-election be taken into consideration when Council makes its annual appointments to regional commissions, committees and boards.

**Possible Initiation of an In-Lieu Parking Waiver Program**

Mayor Ward addressed the possibility of supporting improvements in the downtown through the creation of an in-lieu parking waiver program.

Council requested that Staff report on the possibility of initiating an in-lieu parking waiver program. Staff's report is to address possible fees, as well as potential expenditure of collected revenue (e.g., trolley operation, parking lot, and enforcement).

**12. RESOLUTIONS/ORDINANCES****A. Ordinance No. 1647 (Second Reading) - Water Rates**


MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to adopt Ordinance No. 1647 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING SECTION 13.04.220, SUBSECTIONS (A) THROUGH (D), AND ADDING SUBSECTION (E) OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO WATER RATES.

**13. ADJOURNMENT**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0 (MAYOR PRO TEM BROWN ABSENT), to adjourn at 8:20 p.m. The next Regular Council Meeting will be held on December 5, 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 take place at 6:00 p.m.



MAYOR of the City of  
San Clemente, California



CITY CLERK of the City of  
San Clemente, California