

# CITY OF SAN CLEMENTE

## City Council Minutes

### Regular City Council Meeting – April 3, 2018

*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 April 3, 2018 at 3:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Pro Tem Hamm.

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

\* Arrived at 4:00 p.m.

\*\*Arrived at 3:01 p.m.

**ABSENT** HAMM

**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 MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 3-0 (COUNCILMEMBER DONCHAK AND MAYOR BROWN ABSENT), to recess to Closed Session at 3:00 p.m. to discuss the following:

A. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code section 54957

Title: City Attorney

B. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

Existing litigation pursuant to Government Code section 54956.9(d)(1)

Number of Cases: 9

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

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

*Closed Session items continued on next page*

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

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

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

Case Number: USDC 8:16-cv-00852 DOC-JCG

Case Name: Capistrano Shores, Inc. v. City of San Clemente

Case Numbers: OCSC 30-2014-00709987 and 30-2014-00726889

Case Name: City of San Clemente, et al. v. Dual Diagnosis Treatment Center, Inc., et al.

Case Number: OCSC 30-2015-00805214-CU-MC-CJC

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

Case Number: USDC 8:17-cv-1484

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

Case Number: 30-2017-00917422-CU-WM-CJC

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

Case Number: 30-2017-00963212-CU-WM-CJC

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

Case Number: 30-2017-00947401-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: 2
  
- D. **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**  
Initiation of litigation pursuant to Government Code section 54956.9(d)(4)  
Number of potential cases: 2
  
- E. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**  
Pursuant to Government Code Section 54956.8  
Property: 601 Calle Campana, San Clemente, 92673  
Agency Negotiator: Erik Sund, Assistant City Manager  
Negotiating Party: City of San Clemente  
Under Negotiation: price and terms for possible sale

*Closed Session items continued on next page*

F. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to Government Code Section 54956.8

Property: Sidewalk easement at 228 Calle Marina

Agency Negotiators: Erik Sund, Assistant City Manager; Tom Bonigut,  
Public Works Director/City Engineer

Negotiating Parties: City of San Clemente and adjacent owner

Under Negotiation: Price and Terms of Payment, including maintenance  
obligation and infrastructure completion

**REGULAR BUSINESS MEETING CONVENED**

The Regular Business Meeting of April 3, 2018 convened at 6:15 p.m., with all members present.

**INVOCATION**

Councilmember Donchak gave the invocation.

**PLEDGE OF ALLEGIANCE**

Mayor Brown led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

A. **Toll Road Update**

Councilmember Ward reported that the TCA has cancelled every other TCA meeting since November 2017; advised that the next TCA meeting is scheduled for April 12, 2018.

B. **Donate Life Month Proclamation**

Mayor Brown presented a proclamation to Dick Veale proclaiming the month of April 2018 as Donate Life Month.

C. **Certificate of Recognition - Cathy Lee, Retiring Senior Center Director of Age Well Senior Services**

Mayor Brown presented a Certificate of Recognition to Cathy Lee, Senior Center Director of Age Well Senior Services, in appreciation for 20 years of exceptional service to San Clemente's senior community and wishing her well in her retirement years.

D. **Lt Col Cook Report - 2nd Battalion 4th Marines**

Lt Col Cook, of the 2nd Battalion 4th Marines, reported on the upcoming six-month deployment of the 2nd Battalion, 4th Marines to the Pacific and Australia.

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

**Sober Living Home**

Leslie Power, San Clemente, voiced concern that a detoxification facility is operating next door to her home; cited problems associated with smoking, profanity and drug conversations; stated that she tried working with the homeowner to no avail.

**Pickleball Court Request**

Raudel Barba, San Clemente, stated that he is a pickleball instructor for the City; suggested that San Luis Rey Park would be a good location for permanent pickleball courts due in part to the adequacy of parking.

**Public Safety/Crime/Homelessness**

Gene James, San Clemente, voiced concern that the City is not living up to its mission statement in terms of public safety; urged that the City formulate a strategy to address the problem which includes hiring additional deputies.

Adrienne Markes, San Clemente, voiced concern that she doesn't feel safe in San Clemente because of crime and transients; asserted that the homeless situation is out of control and urged that additional deputies be retained.

**Toll Road Litigation - Capistrano Unified School District**

Patricia Holloway, San Clemente, Trustee with the Capistrano Unified School District, provided an update on two CUSD lawsuits concerning the proposed toll road extension, noting that 1) the CUSD's application to intervene in the City's and Reserve's lawsuits was accepted; and 2) the CUSD's lawsuit concerning the Oso Bridge project was dismissed as being filed past the statute of limitations, but the CUSD is appealing that decision.

3. MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 5-0, 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 reported that no reportable actions were taken during this evening's Closed Session; advised that the Villa San Clemente items were deleted from the Closed Session agenda; reported that Mayor Brown recused himself from participation in Closed Session Item F because his wife was involved in a recent transaction concerning the property that was the subject of that item.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve the Consent Calendar with the removal of Items A, I and J.

B. MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to receive and file:

- (1) Beaches, Parks and Recreation Commission Regular Meeting minutes of January 9, 2018 and Regular Meeting minutes of February 13, 2018.
- (2) Planning Commission Regular Meeting minutes of March 21, 2018.
- (3) Planning Commission Study Session minutes of March 21, 2018.

C. **Warrant Register**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve:

Wire Transfers Nos. 1796 through 1801 and Warrant Nos. 548691 through 548850, paid on 3-16-18, in the amount of.....\$ 780,527.46

Wire Transfers Nos. 1802 through 1803 and Warrant Nos. 548851 through 549011, paid on 3-23-18, in the amount of.....\$2,355,307.59

TOTAL WARRANT REGISTER.....\$3,135,835.05

**Payroll Register**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve:

Warrant Nos. 658 through 661 and  
Automatic Deposit Advises 46802 through  
47094, for the period 2-26-18 through  
3-11-18, paid on 3-16-18, in the amount of.....\$ 443,416.03

TOTAL PAYROLL REGISTER.....\$ 443,416.03

D. **Request for Delay of Measure M2 Grant Funds for the Camino Vera Cruz Regional Traffic Signal Synchronization Project**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to authorize the Director of Public Works/City Engineer to submit a request to the Orange County Transportation Authority (OCTA) to delay the expenditure deadline for Measure M2 grant funds in the amount of \$182,606 for the primary implementation phase of the Camino Vera Cruz Regional Traffic Signal Synchronization Project.

E. **Notice of Completion - FY 2018 Slurry Seal Program**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to:

1. Accept the Street Rehabilitation for FY 2018 Slurry Seal Program, Project No. 28302, from the contractor, Doug Martin Contracting Company, Inc.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the FY 2018 Slurry Seal Program, Project No. 28302.
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, Doug Martin Contracting Company, 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.

F. **Establishment of Weed Abatement Program for 2018**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to adopt Resolution No. 18-08 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, PURSUANT TO SECTIONS 39561 AND 39562 OF THE CALIFORNIA GOVERNMENT CODE DECLARING WEEDS, RUBBISH, REFUSE, AND DIRT UPON STREETS, SIDEWALKS, PARKWAYS, AND PRIVATE PROPERTY TO BE PUBLIC NUISANCES AND PROVIDING FOR THE ABATEMENT THEREOF.

G. **Contract Award - Traffic Engineering Services for the Signal Synchronization of the Camino Vera Cruz Corridor**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to:

1. Approve, and authorize the Mayor to execute, Contract C18-12 by and between the City of San Clemente and Advantec Consulting Engineers, providing for traffic engineering services for the signal synchronization of the Camino Vera Cruz Corridor, at a cost not to exceed \$95,380.
2. Approve a supplemental appropriation in the amount of \$240,858 for the synchronization of the Camino Vera Cruz Corridor from the Gas Tax Fund balance to Account 012-861-45300-000-18329.
3. Accept grant revenue of \$192,686 into the Gas Tax Fund Account 012-000-33745-000-18329 for the synchronization of the Camino Vera Cruz Corridor.

H. **Reduction of Performance and Labor and Material Bonds Related to the Marblehead Coastal Development Commercial Site Rough and Precise Grading to Establish Building Pads, Precise Grade and Storm Drain Improvements, and Sewer and Water Improvements in Tract 8817**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to adopt Resolution No. 18-09 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE REDUCTION OF PERFORMANCE AND LABOR & MATERIAL BONDS RELATED TO THE MARBLEHEAD COASTAL DEVELOPMENT COMMERCIAL SITE ROUGH & PRECISE GRADING TO ESTABLISH BUILDING PAD, PRECISE GRADE & STORM DRAIN IMPROVEMENTS, AND SEWER & WATER IMPROVEMENTS.

**ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION****A. City Council Minutes (March 6, 2018 and March 12, 2018)**

Richard Boyer, San Clemente, voiced concern with Council's approval of freeway-oriented signage for the Outlets at San Clemente at its March 6, 2018 meeting; expressed particular concern with the approval of signs on the southeast wall and the associated visual impact on residents located above the project; urged that Council reconsider the item before approving the minutes of the City Council meeting of March 6, 2018.

Benjamin Doran, San Clemente, urged that Council reconsider its approval of the freeway-oriented signage for the Outlets at San Clemente; asserted that the ten signs on the southeast wall are especially problematic.

Pete van Nuys, San Clemente, stated that the experts that spoke at the March 6, 2018 Council meeting on the Applicant's behalf have financial interests in the project; explained that citizens are confused as to what was approved; voiced concern with the visual impact of the signage.

Cathy Armenteros, San Clemente, concurred with the prior speakers and spoke on the magnitude of the impact that the signs will have on various areas of the City; urged that Council not approve the minutes of March 6, 2018.

Mayor Brown noted that the City's special legal counsel is not available at this meeting, and the City Attorney has a conflict on the Outlets issue; recommended that the City Council minutes be continued to the Council meeting of April 17, 2018 to enable the City's special legal counsel to provide clarification relative to the ramifications of approving the minutes, including its affect on possible future reconsideration, ability to impose additional conditions, etc.

**MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER WARD** to continue Agenda Item 6-A (Special and Regular City Council Meeting minutes of March 6, 2018 and the Adjourned Regular City Council Meeting minutes of March 12, 2018) to the Council meeting of April 17, 2018 and to direct that the City's special counsel be available at that meeting.

City Manager Makshanoff advised that he received a communication from the City's special legal counsel and that he can share that information with Council during Closed Session.



MOTION BY MAYOR BROWN, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 5-0, to recess to Closed Session at 7:05 p.m. to discuss the following:

Case Name: Villa San Clemente, LLC v. City of San Clemente  
Case Number: USDC 8:17-cv-1484

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

Case Name: Villa San Clemente, LLC v. City of San Clemente  
Case Number: 30-2017-00963212-CU-WM-CJC

Case Name: Villa San Clemente, LLC v. City of San Clemente  
Case Number: 30-2017-00947401-CU-WM-CJC

Council reconvened at 7:15 p.m, with all members present.

MAYOR PRO TEM HAMM AND COUNCILMEMBER WARD withdrew the motion on the floor.

MOTION BY MAYOR BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 5-0, to continue Agenda Item 6-A (Special and Regular City Council Meeting minutes of March 6, 2018 and the Adjourned Regular City Council Meeting minutes of March 12, 2018) to the Council meeting of April 17, 2018.

I. **Agreement with Friends of San Clemente Foundation to Manage Donated Pet Waste Bag Stations on Public Property**

John Dorey, speaking on behalf of the Friends of San Clemente Foundation, provided an overview of the Foundation's proposal to assume management of pet waste bag station sponsorships on public property; explained that the proposal provides an opportunity to improve the Foundation's cash flow; explained that the Foundation funds various Beaches, Parks and Recreation events, amenities and scholarships and urged Council to approve Staff's recommendation.

During the course of discussion, Staff indicated that it will work to lower the height of the sign to approximately 5', remove the "Doggie Pot" label, improve spacing where sponsors will be identified, and ensure that signage is placed in a manner that does not interfere with beach views.

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 5-0, to approve, and authorize the City Manager to execute, a three-year agreement (Contract C18-13) by and between the City of San Clemente and the Friends of San Clemente Beaches, Parks and Recreation Foundation, providing for management of pet waste bag station sponsorships on public property.

J. **Opioid Epidemic Contingency Fee Agreement**

MOTION BY COUNCILMEMBER SWARTZ, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 3-2 (MAYOR PRO TEM HAMM AND COUNCILMEMBER WARD DISSENTING), to approve, and authorize the Mayor to execute, a Contingency Fee Agreement (Contract C18-14), by and between the City of San Clemente and the law firms of Andrews & Thornton, Skikos Crawford Skikos & Joseph, and Robinson Calcagnie, Inc., relating to the litigation the consortium attorneys will pursue in California state court on behalf of the City against pharmaceutical and other companies alleged to be responsible for the opioid crisis.

7. **PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

None.

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

None.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

None.

C. **City Attorney**

None.

D. **Council Members**

**Community Engagement Panel (CEP) Report**

Councilmember Swartz reported on his attendance at a recent CEP meeting, noting that experts are being retained to assist in the decommissioning process and relocation of canisters; stated that defective pins on a new version of the new canisters (which did not create a safety problem) was caught by Southern California Edison (SCE) and the manufacturer is accepting responsibility and is correcting the problem; noted that Southern California Edison is amenable to adding 24/7 radiation monitoring on site and making the monitoring information accessible to the public.

**Car Show/Recognition of Fred Swegles**

Mayor Pro Tem Hamm reported that the Downtown Business Association (DBA) is seeking car show advertisers; requested that Fred Swegles be recognized at a future Council meeting for his long-time service as a reporter on San Clemente issues.

**Homeless Issues in Orange County/State of the City**

Mayor Brown reported that he represented the City in Judge Carter's Chambers at the Ronald Reagan Federal Courthouse in Santa Ana in discussions concerning homeless issues in Orange County; explained that the City is actively participating in conversations, but noted that the City is not a party to the lawsuit; stated that the State of the City event will take place on April 5, 2018.

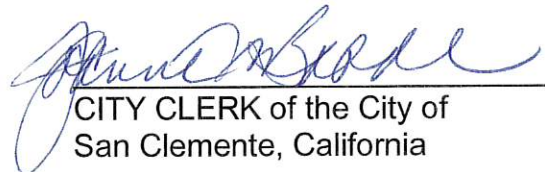
12. **RESOLUTIONS/ORDINANCES**

None.

13. **ADJOURNMENT**

MOTION BY MAYOR BROWN, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to adjourn at 7:45 p.m. in memory of William King, Community Development Deputy Director.

The next Regular Council Meeting will be held on April 17, 2018 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.

  
CITY CLERK of the City of  
San Clemente, California



MAYOR of the City of  
San Clemente, California