

# CITY OF SAN CLEMENTE

## City Council Minutes

### Adjourned Regular City Council Meeting – May 15, 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.*

An Adjourned Regular Meeting of the San Clemente City Council was called to order on May 15, 2018 at 4:32 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Brown.

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

**ABSENT** NONE

**STAFF PRESENT** Erik Sund, Assistant City Manager; Scott Smith, City Attorney; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk

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### **CLOSED SESSION**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 5-0, 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: 12

Case Name: Pearcy v. Becklund, et al.  
Case Number: 30-2015-00819945 CU-PA-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: 30-2017-00963212-CU-WM-CJC

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

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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: 30-2017-00959587-CU-WM-CJC

Case Name: Villa San Clemente, LLC. v. City of San Clemente  
Case Number: 30-2017-00945850-CL-JR-CJC

Case Name: San Clemente Vacation Rental Alliance v. City of San Clemente  
Case Number: OCSC 30-2016-00858999-CU-WM-CJC

Case Name: Orange County Catholic Worker v. Orange County  
Case Number: SA CV 18-0155-DOC (JDE)

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

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

Case Name: Villa San Clemente LLC v. City of San Clemente  
Case Number: 30-2018-00990891-CU-WM-CJC

- B. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**  
Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)  
Number of potential cases: 2
  
- C. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**  
Initiation of litigation pursuant to Government Code section 54956.9(d)(4)  
Number of potential cases: 1

**REGULAR BUSINESS MEETING CONVENED**

The Regular Business Meeting of May 15, 2018 convened at 6:23 p.m., with all members present.

**INVOCATION**

Mayor Brown gave the invocation.

**PLEDGE OF ALLEGIANCE**

Mayor Pro Tem Hamm led the Pledge of Allegiance.

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

City Attorney Smith reported that the City brought a motion to have venue for its case against the TCA heard in Riverside County, noting that the motion was successful and the case will be heard in Riverside County; advised that pre-trial motions in the case are set to be heard beginning later this month and continuing through the beginning of July 2018.

**B. Proclamation Presentation - National Beach Safety Week**

Mayor Brown presented a proclamation to Rod Mellott, Marine Safety Lieutenant, proclaiming the week from May 21, 2018 through May 28, 2018 as National Beach Safety Week.

**C. Proclamation Presentation - Older Americans Month**

Mayor Brown presented a proclamation to Beth Apodaca, Interim Site Director, Dorothy Visser Senior Center, proclaiming the month of May 2018 as Older Americans Month.

**D. Proclamation Presentation - Buddy Poppy Days**

Mayor Brown presented a proclamation to Wayne Greenleaf, San Clemente Veterans of Foreign Wars Post 7142, proclaiming May 26 and 27, 2018 as Buddy Poppy Days.

**E. Certificates of Recognition - Deputies Joe Bull and Jeremiah Prescott**

Mayor Brown presented Certificates of Recognition to Deputies Joe Bull and Jeremiah Prescott in recognition of their promotions to the rank of Sergeant.

**F. San Clemente High School Youth Coalition**

Helen Calderon, President of SC Shift, together with members of SC Shift, presented the results of San Clemente High School Youth Coalition's survey of off-site alcohol retailers and compliance with laws related to sales of alcoholic beverages to underage youth. A hard copy of SC Shift's PowerPoint presentation is on file with the City Clerk.

**G. Drowning Prevention Awareness Proclamation**

Mayor Brown presented a proclamation to Rob Capobianco, OCFA Division Chief, proclaiming the City's participation in the "*Always Watch Your Child Around Water*" and "*Never Swim Alone*" 2018 campaigns.

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

1. Carni Campbell and Owen Africa reported on San Clemente High School campus activities.
2. Mayor Brown presented Certificates of Recognition to Carni Campbell, and Trey Russell in absentia, for providing reports concerning San Clemente High School activities at Council meetings during the 2017/18 school year.

**I. 2018 Wall of Recognition Honoree**

Recreation Manager Thomas reviewed the contents of the Administrative Report.

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 5-0, to approve the selection of Lou Leto as the 2018 honoree to the Wall of Recognition.

Mayor Brown presented Lou Leto with a Certificate of Recognition.

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

**IBI Study Results - San Onofre State Park**

Stefanie Sekich-Quinn, Surfrider Foundation, stated Surfrider was pleased that the IBI Arterial and Mobility Study concluded that an arterial through the San Onofre State Park, specifically connecting La Pata to Cristianitos, would virtually have no utility; spoke on the recreational, environmental, and economic benefits of the park.

City Attorney Smith stated for the record that the City is not studying the possibility of placing a road through the San Onofre State Park.

Marty Benson, Save San Onofre Coalition, commented that the IBI Study found no utility in constructing a road through the San Onofre State Park; urged that Council adopt a resolution, or otherwise commit, to not support a road through the park in the future; urged that the City drop its litigation.

### **Cannabis**

Paul Middleton, San Clemente, spoke on the benefits of cannabis to cancer patients as well as the economic benefits to the State and local governments.

Michael Rainier, San Clemente, stated that cannabis businesses will bring revenue to the City.

Angela Conrad, San Clemente, urged that Council agendaize cannabis regulations for a future meeting, noting that regulations will help ensure that safe cannabis is available; commented on the medical benefits of cannabis.

### **Temporary Signs**

Louise Herbert, San Clemente, commended Code Enforcement for prompt removal of illegal temporary signs.

### **Outlets at San Clemente**

Richard Boyer, President of San Clemente Citizens for Integrity in Development, voiced concern that the Outlets at San Clemente filed another lawsuit on May 8, 2018 that asks the court to set aside all decisions from his group's earlier successful lawsuit; voiced disappointment that the Outlets failed to negotiate and requested to be apprised of any reportable actions on this issue that are taken in Closed Session.

### **North Beach Concession Stand**

Jack Straw, San Clemente, explained that the new North Beach concessionaire is not expected to assume operations until mid or late summer and questioned whether the City would consider allowing an interim vendor to operate during the summer months.

3. MOTION BY COUNCILMEMBER SWARTZ, 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**

**Villa San Clemente Cases**

City Attorney Smith reported that due to a prior representation, BBK is not serving as legal counsel to the City on the Villa San Clemente cases; explained that the subject cases are being handled by special counsel.

**Orange County Catholic Worker v. Orange County**

With regard to the case of Orange County Catholic Worker v. Orange County that was considered during this evening's Closed Session, City Attorney Smith reported that on a motion by Councilmember Swartz, seconded by Councilmember Donchak, and carried 5-0, Council approved a joint defense agreement with the law firm of Jones Day, as well as a limited waiver of conflicts with BBK.

**Deletion of SR-241 Extension from County General Plan**

City Attorney Smith reported, that in contrast to public comments expressed during the Oral Communications portion of this meeting, the City sued the County of Orange, et al. to remove the SR-241 extension from the County General Plan; stated that the Orange County Board of Supervisors will consider adopting a General Plan Amendment at its meeting of May 22, 2018 which would delete the SR-241 extension from Oso Parkway to the I-5 from the County General Plan; urged citizens to recommend that the Board of Supervisors support the settlement by adopting the General Plan Amendment.

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 Item 6-J.

A. **City Council Minutes**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve the Special and Regular City Council Meeting minutes of April 17, 2018.

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

- (1) Minutes of the Beaches, Parks and Recreation Commission Special Meeting of February 27, 2018.
- (2) Minutes of the Regular Meeting of the Design Review Subcommittee Meeting of April 11, 2018.
- (3) Minutes of the Planning Commission Regular Study Session of May 2, 2018.
- (4) Minutes of the Planning Commission Regular Meeting of May 2, 2018.

C. **Warrant Register**

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

Wire Transfers Nos. 1817 through 1823, and Warrant Nos. 549654 through 549796, paid on 4-27-18, in the amount of .....\$1,043,890.07

Wire Transfers Nos. 1824 through 1828 and Warrant Nos. 549797 through 549987, paid on 5-4-18, in the amount of.....\$1,247,463.50

TOTAL WARRANT REGISTER.....\$2,291,353.57

**Payroll Register**

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

Warrant Nos. 666 through 668, Automatic Deposit Advises 47704 through 48023, for the period 4-9-18 through 4-22-18 paid on 4-27-19, in the amount of.....\$ 466,212.25

TOTAL PAYROLL REGISTER.....\$ 466,212.25

**D. Conflict of Interest Code - Biennial Review**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to direct the City Clerk, in coordination with the City Attorney and Human Resources Manager, to review the City's Conflict of Interest Code to determine if changes to the Code are needed. The results of this analysis are to be reported to Council prior to October 2018.

**E. Notice of Completion - Water Reclamation Plant Concrete Repairs, Grating Replacement and Primary Splitter Box Repair**

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

1. Accept the Water Reclamation Plant Concrete Repairs, Grating Replacement and Primary Splitter Box Repair from the contractor, Abhe & Svoboda, Inc. (Contract C16-39)
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for Water Reclamation Plant Concrete Repairs, Grating Replacement and Primary Splitter Box Repair, Project Nos. 25208 and 25206.
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 Abhe & Svoboda, 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. Contract Amendment - Tree Maintenance Services**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve, and authorize the Mayor to execute, Amendment No. 3 to Contract C05-31, by and between the City of San Clemente and Rod's Tree Service. This amendment extends the term of the agreement from June 30, 2018 to June 30, 2019, increases the FY 2018 contract amount from \$366,000 to \$432,000, and sets the FY 2019 contract amount at \$384,000.



G. **Grant of Trail Easement to the County of Orange for Portions of the Prima Deshecha Regional Riding and Hiking Trail**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve, and authorize the Mayor to execute, a grant of trail easement related to the Prima Deshecha Regional Trail to the County of Orange.

H. **Final Parcel Map 2016-195, 33 Degrees Fourplex Condominium Map at 1521 Buena Vista**

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

1. Accept on behalf of the City of San Clemente the water rights within Final Parcel Map 2016-195 as dedicated.
2. Accept on behalf of the City of San Clemente the sidewalk and public access easement as dedicated.
3. Approve Final Parcel Map 2016-195 as it conforms to the requirements set forth in the Subdivision Map Act and the previously approved Tentative Parcel Map.
4. Authorize the Public Works Director/City Engineer to execute the Final Parcel Map.
5. Authorize the City Clerk to execute and submit the Final Parcel Map for recordation with the County of Orange Recorder's Office.

I. **Contract Award - Shorecliffs Middle School Safe Routes to School Pedestrian and Bicycle Improvements**

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

1. Approve the plans and specifications for the Shorecliffs Middle School Safe Routes to School Pedestrian and Bicycle Improvements, Project No. 17327.
2. Approve, and authorize the Mayor to execute, Contract C18-20 by and between the City of San Clemente and Calpromax Engineering, Inc., providing for construction of the Shorecliffs Middle School Safe Routes to School Pedestrian and Bicycle Improvements, Project No. 17327, in the amount of \$737,887.

*Action continued on next page*

3. Approve a transfer of \$128,000 to the General Fund from the Fund Balance of the Street Improvement Fund.
4. Approve a transfer of \$33,000 to the General Fund from the Fund Balance of the Water Fund Depreciation Reserve.
5. Approve a supplemental appropriation of \$161,000 in the General Fund to Account 001-416-45300-000-17327.

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

J. **Designation of Legal Fees**

Following Councilmember commentary concerning City efforts to minimize legal costs to help fund additional Deputies, MOTION BY COUNCILMEMBER SWARTZ, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to:

1. Approve, and authorize the Mayor to execute, Contract C18-21 by and between the City of San Clemente and Kutak Rock, LLP, providing for City Attorney services in the amount of \$300,000.
2. Approve, and authorize the Mayor to execute, Amendment No. 3 to Contract AC-734, by and between the City of San Clemente and Harper & Burns, LLP, providing for City Attorney services, in the amount of \$48,750.
3. Approve a supplemental appropriation from the General Fund's Unassigned Fund Balance in the amount of \$421,750 to Other Legal Services, Account 001-203-43635-000-00000.

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**

**Public Safety Task Force Final Meeting/City Council Budget Workshop**

Mayor Pro Tem Hamm reported on the Public Safety Task Force (PSTF) meeting of May 9, 2018, noting that it will probably be the task force's last meeting; reported that the meeting was well attended with persons who support increasing public safety; stated the PSTF's recommendations will be presented to Council at its budget workshop on May 21, 2018 at 4:00 p.m. in the Council Chambers.

**"City Talk" - San Clemente Baha'i Center**

Mayor Brown reported that he and a member of City staff will speak at "City Talk" at the San Clemente Baha'i Center tomorrow evening; advised that the event is open to the public and will take place at 7:00 p.m. at the San Clemente Baha'i Center.

**2nd Battalion 4th Marines Video - Australia Deployment**

Mayor Brown displayed a video of the 2nd Battalion 4th Marines that was filmed at its current deployment in Australia. The video, narrated by Lt Col Warren Cook, identified major events since the battalion's arrival in Australia and explained future plans.

**76th Annual Camp Pendleton Anniversary Celebration/2nd Annual Horseback Ride**

Mayor Pro Tem Hamm reported on his participation in the 76th Annual Camp Pendleton Anniversary Celebration and 2nd Annual Horseback Ride.

**12. RESOLUTIONS/ORDINANCES****A. Ordinance No. 1652 (Second Reading) - Phase 2 Comprehensive Code Updates**

MOTION BY MAYOR BROWN, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to adopt Ordinance No. 1652 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, MAKING CEQA FINDINGS AND FOR A CITY-INITIATED AMENDMENT (ZA 17-412) TO THE CITY OF SAN CLEMENTE MUNICIPAL CODE TITLE 17, ZONING, TO ACHIEVE CONSISTENCY BETWEEN THOSE DOCUMENTS AND THE ADOPTED CENTENNIAL GENERAL PLAN, FOR PHASE 2 OF THE COMPREHENSIVE ZONING CODE PURSUANT TO GOVERNMENT CODE SECTION 65860.

**B. Ordinance No. 1653 (Second Reading) - Temporary Fencing**

MOTION BY MAYOR BROWN, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to adopt Ordinance No. 1653 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, MAKING CEQA FINDINGS AND FOR A CITY-INITIATED AMENDMENT (ZA 18-090) OF THE CITY OF SAN CLEMENTE MUNICIPAL CODE SECTION 17.28.300 FOR TEMPORARY FENCING.

C. **Ordinance No. 1654 (Second Reading) - Regulation of Short-Term Lodging Units**

Mayor Brown recused himself from this agenda item because his wife is a real estate professional involved in residential home sales and some aspects of the subject item relate to homes within 500' of the Brown residence; left the Council Chambers at 7:45 p.m.

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 4-0-1 (MAYOR BROWN RECUSED), to adopt Ordinance No. 1654 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE APPROVING AN AMENDMENT TO MUNICIPAL CODE TITLE 17 REGARDING REGULATION OF SHORT-TERM LODGING UNITS.

Mayor Brown returned to the dais at 7:47 p.m.

D. **Ordinance No. 1655 (Second Reading) - Fees for Administrative Hearings and Appeals/Judicial Review of Administrative Citations**

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 5-0, to adopt Ordinance No. 1655 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADDING A NEW CHAPTER 1.22 TO TITLE 1 OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO FEES FOR ADMINISTRATIVE HEARINGS AND APPEALS AND AMENDING SECTIONS 1.20.080 AND 1.20.090 OF CHAPTER 1.20 OF TITLE 1 OF THE MUNICIPAL CODE RELATING TO JUDICIAL REVIEW OF ADMINISTRATIVE CITATIONS.

E. **Ordinance No. 1656 (Second Reading) - Regulation of Short-Term Lodging Units (Administrative Fines, Transient Occupancy Tax, and Solid Waste Management**

Mayor Brown recused himself from this agenda item because his wife is a real estate professional involved in residential home sales and some aspects of the subject item relate to homes within 500' of the Brown residence; left the Council Chambers at 7:45 p.m.

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 5-0, to adopt Ordinance No. 1656 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MUNICIPAL CODE CHAPTERS 1.20 (ADMINISTRATIVE FINES), 3.24 (TRANSIENT OCCUPANCY TAX), AND A CROSS-REFERENCE TO CHAPTER 8.28 IN SUBSECTION

17.28.292(E)(3) (SOLID WASTE MANAGEMENT) REGARDING  
REGULATION OF SHORT-TERM LODGING UNITS.

Mayor Brown returned to the dais at 7:47 p.m.

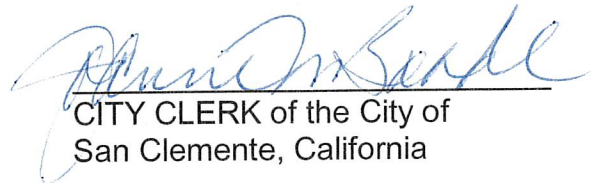
13. **ADJOURNMENT**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to adjourn at 7:48 p.m. to an Adjourned Regular Meeting to be held on May 21, 2018 at 4:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, for the purpose of conducting a Public Hearing/Workshop concerning the proposed FY 2018/19 City budget.

A subsequent Adjourned Regular Council Meeting will be held on June 12, 2018 in the Council Chambers. Closed Session items will be considered at 5:00 p.m. and the Regular Business Meeting will commence at 6:00 p.m. This Adjourned Regular Council Meeting takes the place of the Regular Council Meeting that would normally be held on June 5, 2018, but was previously rescheduled to enable the Chambers to be used as a polling site for the June 5, 2018 primary election.



MAYOR of the City of  
San Clemente, California



CITY CLERK of the City of  
San Clemente, California