

# CITY OF SAN CLEMENTE

## City Council Minutes

### Regular City Council Meeting – October 2, 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 October 2, 2018 at 5:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Brown.

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

**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**

City Attorney Smith requested that an additional Closed Session item be added to the agenda relating to the possibility of filing an administrative appeal against the FCC, based on the need for immediate action and the fact that the need for action came to the City's attention after the agenda was posted.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 5-0, to add the below item to the Closed Session agenda because there is a need for immediate action and the need for action came to the City's attention after the agenda was posted:

#### **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Initiation of litigation pursuant to Government Code section 54956.9(d)(4)

Number of potential cases: 1

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to recess to Closed Session at 5:03 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: 8

*Closed Session items continued on next page*

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

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: City of San Clemente v. Foothill/Eastern Transportation Corridor  
Agency  
Case Number: OCSC 30-2018-01000331-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: Anthem Sales and Management, LLC, et al. v. City of San Clemente  
Case Number: OCSC 30-2018-01008216

Case Name: Anthem Sales and Management, LLC, et al. v. City of San Clemente  
Case Number: USDC 8:18-cv-01359

Case Name: City of San Clemente, et al. v. Dual Diagnosis Treatment Center,  
Inc., et al.  
Case Number: OCSC 30-2017-00954552-CU-BC-CJC

Case Name: JL Kids, LLC v. California Department of Transportation, et al.  
Case Number: OCSC 30-2018-01014871-CU-EI-CXC

- B. **CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**  
Significant exposure to litigation pursuant to Government Code section  
54956.9(d)(2)  
Number of potential cases: 1
  
- C. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**  
Pursuant to Government Code Section 54956.8  
Property: 415 Avenida Granada, San Clemente  
Agency Negotiator: Erik Sund, Assistant City Manager  
Negotiating Parties: City of San Clemente and Casa Romantica Cultural Center  
and Gardens  
Under Negotiation: Lease terms and related capital improvements
  
- D. **CONFERENCE WITH LABOR NEGOTIATORS**  
Pursuant to Government Code Section 54957.6  
Agency designated representative: Assistant City Manager  
Unrepresented employee: All Employees

*Closed Session items continued on next page*

**E. 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 October 2, 2018 convened at 6:05 p.m., with all members present.

**INVOCATION**

Mayor Brown gave the invocation.

**PLEDGE OF ALLEGIANCE**

Councilmember Donchak led the Pledge of Allegiance.

**1. SPECIAL PRESENTATIONS**

**A. Toll Road Update**

Dan Bane, San Clemente, stated that he reviewed the Project Study Report, which indicates that the TCA is actively pursuing managed lanes; urged that the City expand its legal efforts to challenge whether the TCA has the legislative authority to engage in toll lanes; urged that the City request an agenda item for a TCA Board meeting to question its authority to pursue any managed lane option.

City Attorney Smith responded that a court hearing will be held on November 13, 2018 on the TCA's demurrer, which seeks to dismiss the City's action; pointed out that the court indicated that challenges to the TCA's legislative authority could be considered after the motion to dismiss is determined; advised that legal staff intends to amend the City's request for declaratory relief to include the issue of TCA overreach with regard to managed lanes.

**B. Proclamation Presentation - Fire Prevention Week**

Mayor Brown presented a proclamation to Captain Darren Robertson proclaiming the period of October 7-13, 2018 as Fire Prevention Week.

**C. Proclamation Presentation - Red Ribbon Week**

Mayor Brown presented a proclamation to Jan Sener, former Crime Prevention Specialist and current Recreation Leader, proclaiming the period October 15-21, 2018 as Red Ribbon Week.

**D. Boys and Girls Club Report**

Report from Terence Hughes, Chief Executive Officer of the Boys and Girls Club, regarding Boys and Girls Club activities.

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

**PierPride Fundraiser**

Joel Mathison, Rancho Santa Margarita, stated that October is PierPride Month; reported on the "Cruise Into History" event to raise funds for the San Clemente pier, which will take place on October 11, 2018.

**Districting Initiative**

Michelle Schumacher, San Clemente, stated that Venture Strategic, which is a TCA firm, did work concerning the districting initiative with Bieber Communications; voiced concern that the TCA is involved in local politics; commented on the negative effects of a toll road extension and managed lanes through San Clemente.

Dan Bane, San Clemente, stated that district elections improve citizen representation and are not guided by special interests; commented on his efforts to oppose the toll road extension through San Clemente.

**Term Limits/Campaign Contributions**

Jackson Hinkle, San Clemente, spoke in support of Councilmember term limits, campaign contribution limits, and requiring Councilmembers to recuse from making land use decisions if they received campaign contributions from developers; stated that he is circulating a petition, signed thus far by 416 persons, who support his positions on the three-mentioned items.

Jake Rybczyk, San Clemente, conveyed support for Council term limits to facilitate competitive elections; spoke in support of campaign finance reform.

**San Clemente Leadership/Signage at Ole Hanson Beach Club**

Tony Rubolino, San Clemente, narrated a PowerPoint presentation entitled "Honesty and Integrity in San Clemente Leadership - Do They Exist and Are They Important Anymore", a copy of which is on file with the City Clerk; voiced concern with circumstances surrounding signage that was erected at the Ole Hanson Beach Club relative to pool hours being reduced to fund additional Police deputies.

**Homelessness/Councilmember Focus Assignments**

Anthony Lafrano, San Clemente, referred to the cover story in the San Clemente Times entitled "The Humane Condition" and urged that newspapers not glamorize homeless individuals; urged that homeless persons in North Beach be provided with jobs; suggested that each Councilmember be assigned oversight responsibility with regard to various issues facing the City, such as nuclear waste, North Beach/Pico, TCA, public relations, trails, etc.

**Golf Course/Traffic Signal Synchronization/Districting Measure Defects**

Bob Baker, San Clemente, complimented the condition of the golf course and the effectiveness of the traffic signal synchronization project; opined that the districting measure has legal defects that fail to comply with State law.

**Deployment Packages to the 2nd Battalion, 4th Marines**

Wayne Eggleston, San Clemente, noted that deployment packages were sent to the 2nd Battalion, 4th Marines and read a sampling of thank-you notes received from members of the unit; reported that a Welcome Home Parade for the City's adopted unit will take place on November 9, 2018 on Avenida Del Mar.

3. MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, 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**

None.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER SWARTZ, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve the Consent Calendar.

A. **City Council Minutes**

(1) MOTION BY COUNCILMEMBER SWARTZ, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve the City Council Regular Meeting minutes of September 18, 2018.

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

- (1) Design Review Subcommittee Regular Meeting minutes of August 29, 2018.
- (2) Planning Commission Adjourned Regular Meeting minutes of September 19, 2018.

C. **Warrant Register**

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

Wire Transfers Nos. 1901 through 1905  
 and Warrant Nos. 553164 through 553284,  
 paid on 9-14-18, in the amount of.....\$2,073,718.64

Wire Transfers Nos. 1906 through  
 1907 and Warrant Nos. 553285 through  
 553472, paid on 9-21-18.....\$ 779,867.02

TOTAL WARRANT REGISTER..\$ 2,853,585.66

**Payroll Register**

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

Warrant Nos. 692 and Automatic  
 Deposit Advises 51015 through 51336, for  
 the period 8-27-18 through 9-9-18, paid on  
 9-14-18, in the amount of.....\$ 479,647.93

TOTAL PAYROLL REGISTER...\$ 479,647.93

D. **Contract Amendment - Short-Term Wastewater Services Agreement**

MOTION BY COUNCILMEMBER SWARTZ, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve, and authorize the City Manager to execute, Amendment No. 3 to Contract C17-55, by and between the City of San Clemente and the Santa Margarita Water District, relating to the conveyance and treatment of Talega wastewater. This Amendment extends the term of the contract for 90 days.

E. **South Orange County Water Storage Coalition Letter of Interest**

MOTION BY COUNCILMEMBER SWARTZ, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to authorize the Utilities Director to execute a non-binding letter of interest to the Santa Margarita Water District for the formation of a South Orange County Water Storage Coalition.

F. **Contract Award - Downtown Sidewalk Cleaning**

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

1. Approve, and authorize the City Manager to execute, Contract C18-55, by and between the City of San Clemente and SoCal Property Services, providing for FY 2019 downtown sidewalk cleaning, in an amount not to exceed \$26,000.
2. Approve a transfer of \$26,000 from Account 001-203-44900 (City Council Contingency) to Account 001-634-43893 (Sidewalk Pressure Washing).

G. **Contract Amendment - Temporary Contract Services in the Planning Division**

MOTION BY COUNCILMEMBER SWARTZ, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve, and authorize the Mayor to execute, Amendment No. 5 to Contract C17-17, by and between the City of San Clemente and Sagecrest Planning + Environmental, providing for temporary contract services in the Planning Division. This Amendment extends the terms of the contract through February 28, 2019, or until services are no longer needed, and increases the contract amount from \$379,000 to \$415,150, an increase of \$36,150 (to be paid with developer deposit funds).

H. **Construction Contingency, Design and Inspection Cost Increases for the Prima Deshecha Canada Channel - Flood Control Facility No. MO1/Avenida Vaquero Culvert Rehabilitation**

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

1. Approve a supplemental appropriation in the amount of \$357,850 from the Storm Drain Fund Depreciation Reserve to Account 059-553-45300-000-15006.
2. Approve a \$300,000 increase in construction contingency for the Prima Deshecha Canada Channel (Facility No. MO1/Avenida Vaquero Culvert Rehabilitation) from the Storm Drain Fund Depreciation Reserve to Account 059-553-45300-000-15006.
3. Approve, and authorize the Mayor to execute, Amendment No. 2 to Contract C16-72, by and between the City of San Clemente and South Coast Engineering Services, providing for additional engineering services. This Amendment increases the contract amount from \$91,230 to \$149,080, an increase of \$57,850.

I. **Declaration of Surplus Property - Retired Office Furniture, Equipment, Legal Library Books and Cubicles**

MOTION BY COUNCILMEMBER SWARTZ, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to declare the retired office furniture, equipment, legal library books, and cubicles to be surplus and approve and authorize GovDeals.com and Ken Porter Auctions to conduct the public auction for the City of San Clemente surplus office furniture, equipment and cubicles.

J. **Welcome Home Parade for City's Adopted Marine Unit**

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

1. Approve the parade route, temporary street and parking lot closures and surrounding metered parking spaces along Avenida Del Mar.
2. Approve a supplemental appropriation of \$1,507 to Account 001-629-44420-000-00000 for the additional costs of materials and equipment.

*Action continued on next page*



3. Approve a supplemental appropriation up to \$8,170 to Account 001-629-44420-000-00000 for OCSD staff support, contingent upon the response from OCSD regarding a fee waiver request.

**K. Position Classification and Salary Schedule Modifications**

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

1. Adopt Resolution No. 18-52 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADOPTING REVISED SALARY SCHEDULES AND NEW CLASSIFICATIONS AND AMENDING RESOLUTION NO. AND ANY OTHER RESOLUTIONS IN CONFLICT THEREWITH. This Resolution changes the Park Monitor classification to Park Ranger and the Lead Park Monitor classification to Lead Park Ranger.
2. Adopt the revised Salary Schedules, effective October 8, 2018. The revised Salary Schedules include the addition of the Building Official position to the full-time schedule and Office Specialist I and II positions to the part-time schedule.

**L. Cooperative Purchase of Telecommunications Services Through State of California Telecommunications Contract (CALNET 3)**

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

1. Approve, and authorize the Mayor to execute, Authorization To Order (ATO) for Statewide Contract C3-B-16-07-TS-43 with Cox Business for purchase of Telecommunications Services, including Metropolitan Area Network Ethernet (Category 3) and Managed Internet (Category 5) Services.
2. Authorize the Mayor to execute the proposed Telecommunications Service Request agreements with Cox at a cost within the Fiscal Year 2018-19 Adopted Budget (estimated at \$97,234 per year) for the remaining life of the CALNET 3 Contract, currently due to expire no later than June 30, 2020.

**7. PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

A. **Code Amendment - Modifying the Definition of "Smoking" to Include Vaping and Electronic Devices**

Report from the City Attorney concerning the possibility of amending the Code of the City of San Clemente to define "smoking" to include vaping and electronic devices.

City Attorney Smith reviewed the contents of the Administrative Report.

Following discussion, MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-1 (COUNCILMEMBER SWARTZ DISSENTING), to introduce Ordinance No. 1659 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING THE SAN CLEMENTE MUNICIPAL CODE, CHAPTER 8.64 TO DEFINE SMOKING TO INCLUDE VAPING AND ELECTRONIC SMOKING DEVICES.

9. **NEW BUSINESS**

None.

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

**Districting Measure**

Anthony Lafrano, San Clemente, opined that passage of the districting measure will lead to a toll road in San Clemente; stated that Councilmembers should insist that no toll road extension occur through San Clemente and not compromise.

**Downtown Sidewalk Cleaning**

Antoine Price, San Clemente, opined that the \$26,000 bid from SoCal Property Services that Council approved earlier in this meeting (under Agenda Item 6-F) was high; stated that he turned in a bid for the project yesterday.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

None.

C. **City Attorney**

None.

D. **Council Members**

**San Clemente High School Football**

Council wished the San Clemente High School Tritons well as they embark on South Coast League play.

**Toll Road - Importance of Community Unity**

Councilmember Donchak spoke on the importance of the community remaining united to fight the toll road; opined that all Council candidates oppose the toll road and do not have nefarious motives.

**San Clemente High School Homecoming Parade**

Mayor Brown advised that the San Clemente High School homecoming parade will take place on October 5, 2018 along Avenida Del Mar.

**Toll Road Community Meeting**

Mayor Brown announced that a Toll Road community meeting will take place on October 24, 2018 at 6:00 p.m. at the Community Center.

12. **RESOLUTIONS/ORDINANCES**

None.

13. **ADJOURNMENT**

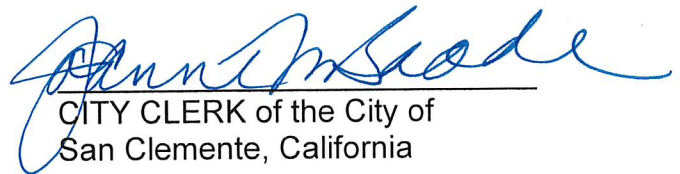
MOTION BY MAYOR BROWN, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to adjourn at 7:15 p.m.

The next Regular Council Meeting will be held on October 16, 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.

A subsequent Adjourned Regular Meeting will be held on November 7, 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. **Please note that the November 7, 2018 Adjourned Regular Council Meeting replaces the Regular Council Meeting that would normally have been held on November 6, 2018. The November 6, 2018 meeting was rescheduled to November 7, 2018 to enable the Council Chambers to be used as a polling site for the November 6, 2018 election.**



MAYOR of the City of  
San Clemente, California



CITY CLERK of the City of  
San Clemente, California