

CITY OF SAN CLEMENTE

City Council Minutes

Regular City Council Meeting – November 20, 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 November 20, 2018 at 5:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Brown.

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

* Left meeting at 9:24 p.m.

**Left meeting at 9:24 p.m.

ABSENT NONE

STAFF PRESENT James Makshanoff, City Manager; Scott Smith, City Attorney; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk.

CLOSED SESSION

Dawn Urbanek, San Clemente, voiced concern with Council's consideration of an amendment to the City Manager's employment contract.

Steve Knoblock, San Clemente, spoke in opposition to amending the City Manager's employment contract; opined that granting additional severance constitutes a gift of public funds; stated that approval of a contract amendment will be met with litigation.

Jim Bieber, San Clemente, urged Council to not support the proposed contract amendment for the City Manager; narrated a PowerPoint presentation, which is on file with the City Clerk, and questioned whether Staff follows the advice of its City Attorney.

Laura Ferguson, San Clemente, suggested that the proposed amendment to the City Manager's contract will prevent the next City Council from implementing positive changes; opined that it is inappropriate to extend or enhance contracts at a time of financial deficit; urged Council to defer the question of amending the City Manager's contract to allow the new Council to act on the proposal.

Gene James, San Clemente, expressed opposition to the City Manager's proposed contract amendment and cited concerns with the associated fiscal impact.

Brad Malamud, San Clemente, stated that the closed session agenda includes a performance review for the City Manager which was completed in September 2018; asserted that discussing Item 9F in Closed Session would represent a Brown Act violation; urged Council to defer any personnel decisions for the new City Council.

Gail Hiduke, San Clemente, voiced concern with the fiscal impact of an enhanced severance package for the City Manager, noting that the money could be better spent on community improvements.

Jim Habig, San Clemente, stated there is no need to determine whether or not the City Manager's contract should be amended at this time; urged that the matter be deferred until the new Council is seated.

Wendy Shrove, San Clemente, urged Council to not discuss the City Manager's contract during Closed Session; opined the issue should be discussed during the public portion of the meeting to facilitate public participation; asserted that taxpayers should not be encumbered because of a political agenda.

MOTION BY COUNCILMEMBER SWARTZ, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to recess to Closed Session at 5:00 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: 3

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: Orange County Catholic Worker v. Orange County

Case Number: SA CV 18-0155-DOC

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 LEGAL COUNSEL- ANTICIPATED LITIGATION

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

Number of potential cases: 2

Closed Session items continued on next page

D. **CONFERENCE WITH LABOR NEGOTIATORS**

Pursuant to Government Code Section 54957.6

Agency designated representatives: Mayor and City Manager

Unrepresented employees: Executive Level Directors

E. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Pursuant to Government Code section 54957

Title: City Manager

BUSINESS MEETING CONVENED

The City Council Business Meeting of November 20, 2018 convened at 6:16 p.m., with all members present.

INVOCATION

Candie Blankman, Pastor, San Clemente Presbyterian Church, gave the invocation.

PLEDGE OF ALLEGIANCE

Mayor Brown led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

A. **Toll Road Update**

City Attorney Smith reported that Council, at its meeting of November 7, 2018, authorized Best, Best & Krieger to challenge the contracts that the TCA awarded at its last meeting because contracts which are in furtherance of CalTrans' general mission, as opposed to the TCA's specific mission, should be paid by the State of California.

Mayor Brown reported that Supervisor Bartlett is proposing an alignment that would extend Los Patrones Parkway to Avenida La Pata, connecting south of the Prima Deshecha Landfill and north of the City's boundaries.

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

Christmas Gifts for City's Adopted Marine Unit

Wayne Eggleston, San Clemente, noted that donations are being collected for Christmas gifts for the 2nd Battalion, 4th Marines, the City's adopted Marine unit; introduced Thor Kunin, Eagle Scout candidate, who is leading the project.

Removal of Tables and Benches from the Beach

Helen McCue, San Clemente, stated that at least 28 tables and benches have been removed from City beaches and not replaced, which violates City policy.

Closed Session Report

Brad Malamud, San Clemente, requested that Council provide a report relative to the discussion that took place during Closed Session Item E and indicate whether or not Item 9F will be deferred.

Nuclear Waste at San Onofre Nuclear Generating Station

Gary Headrick, San Clemente Green, reported that the City sent a letter to the Nuclear Regulatory Commission concerning improper loading of a spent fuel storage canister that occurred on August 3, 2018; stated that the NRC replied that it has procedures in place should a canister be dropped; suggested that the NRC's response was inadequate and that Council should insist on the NRC providing acceptable answers to its questions. A hard copy of the City's letter to the NRC, dated September 5, 2018, is on file with the City Clerk.

Fire Danger Posed by Overgrown Vegetation in City Canyons

Jenifer Massey, San Clemente, voiced concern with overgrown vegetation in the City's canyons and questioned whether vegetation growth is monitored to help alleviate the potential for wildfires; requested information relative to the City's evacuation plan in the event of a fire or incident at SONGS.

3. MOTION BY MAYOR PRO TEM HAMM, 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 Council took no reportable actions during this evening's Closed Session, with the exception of matters that will be communicated during Item 9F.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to approve the Consent Calendar, with the removal of Item M.

A. **City Council Minutes**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to approve the Regular City Council Meeting minutes of November 7, 2018.

B. **Commission and Committee Minutes**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to receive and file the following:

- (1) Golf Course Committee Regular Meeting minutes of September 6, 2018.
- (2) Investment Advisory Committee Regular Meeting minutes of July 23, 2018.
- (3) Beaches, Parks and Recreation Commission Regular Meeting minutes of October 9, 2018.
- (4) Planning Commission Study Session Regular Meeting minutes of November 8, 2018.
- (5) Planning Commission Regular Meeting minutes of November 8, 2018.

C. **Warrant Register**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to:

Approve Wire Transfers Nos. 1927 through 1930 and Warrant Nos. 554218 through 554392, paid on 11-2-18, in the amount of.....\$2,348,169.96

Approve Wire Transfers Nos. 1931 through 1934 and Warrant Nos. 554393 through 554524, paid on 11-9-18, in the amount of.....\$2,662,089.55

TOTAL WARRANT REGISTER.....\$5,010,259.51

Payroll Register

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to:

Approve Warrant Nos. 698 through 699 and Automatic Deposit Advises 52267 through 52560, for the period of 10-22-18 through 11-4-18, paid on 11-9-18, in the amount of.....\$ 474,622.44

TOTAL PAYROLL REGISTER.....\$ 474,622.44

D. **Contract Award – Annual Cathodic Protection System Testing and Evaluation**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to approve, and authorize the City Manager to execute, Contract C18-65, by and between the City of San Clemente and Universal Corrosion Services, LLC, providing for Annual Cathodic Protection System Testing and Evaluation, in the amount of \$178,352.

E. **Contract Award – Wells 5, 6, 8 and Calafia Rehabilitation**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to:

1. Approve the plans and specifications for the rehabilitation of Wells 5, 6, 8 and Calafia, Project No. 14408.
2. Approve a supplemental appropriation of \$159,400 from the Water Fund Depreciation Reserve Account 052-466-45300-000-14408.
3. Approve, and authorize the City Manager to execute, Contract C18-66, by and between the City of San Clemente and Best Drilling and Pump, Inc., providing for the rehabilitation of Wells 5, 6, 8 and Calafia, in the amount of \$262,063.

F. **Contract Award – Design Services for Well Water Treatment Plant Chemical Storage Building**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to approve, and authorize the City Manager to execute, Contract C18-67, by and between the City of San Clemente and AKM Consulting Engineers, providing for design services for a Well Water Treatment Plant Chemical Storage Building, in the amount of \$97,965.

G. **Notice of Completion – Water Reclamation Plant (WRP) Outfall Discharge Piping Repair**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to:

1. Accept the WRP Outfall Discharge Piping Repair (Project No. 28208), from the contractor, NEWest Construction, Inc.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the WRP Outfall Discharge Piping Repair.
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, NEWest Construction, 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.

H. **Contract Amendment - Marine Safety Building Structural Condition Assessment**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to approve, and authorize the City Manager to execute, Amendment No. 3 to Contract AC-706, by and between the City of San Clemente and TranSystems Inc., providing for additional engineering and environmental permitting services for the Marine Safety building. This Amendment increases the contract amount from \$86,100 to \$133,900 (an increase of \$47,800) and extends the contract term to June 30, 2020.

I. **Notice of Completion – Playground Equipment Replacement at Rancho San Clemente Park**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to:

1. Accept the Rancho San Clemente Park Playground Equipment Replacement (Project No. 18143) from the contractor, Landscape Structures, Inc. (LSI).
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the Rancho San Clemente Park Playground Equipment Replacement.
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, Landscape Structures, Inc.
4. Authorize the City Clerk to release the Performance Bond.

J. **Contract Award – San Clemente Municipal Pier ADA Accessibility Improvements**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to:

1. Approve the plans and specifications for the San Clemente Municipal Pier Accessibility Improvements, Project No. 16811.
2. Approve, and authorize the Mayor to execute, Contract C18-68, by and between the City of San Clemente and John S. Meek Company, Inc., providing for construction of San Clemente Municipal Pier ADA Accessibility Improvements, in the amount of \$162,730.

K. **Community Facilities District No. 2006-01 (Marblehead Coastal) Local Agency Special Tax and Bond Accountability Act Report (SB 165) for Fiscal Year Ended June 30, 2018**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to accept and file the Community Facilities District No. 2006-01 (Marblehead Coastal) Local Agency Special Tax and Bond Accountability Act Report (SB 165) for the Fiscal Year ended June 30, 2018.

L. **Notice of Completion – San Clemente Pier Repair and Understory Bird Deterrent**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to:

1. Accept the San Clemente Pier Repairs (Project No. 16811) and Understory Bird Deterrent (Project No. 18810), from the contractor, Associated Pacific Contractors, Inc.
2. Authorize the City Manager to execute, and the City Clerk to record, the Notice of Completion for the San Clemente Pier Repairs and Understory Bird Deterrent.
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 Associated Pacific Contractors, 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.

N. **Declaration of Surplus Property/Purchase and Sale Agreement - 480 Square Foot Parcel, located South of the 14th Tee on the City's Municipal Golf Course, Bordered by Calle Bahia and the Parking Lot Access to the Golf Maintenance Building**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to:

1. Declare the 480 square foot parcel (parcel # pending), located south of the 14th tee on the City's Municipal Golf Course, bordered by Calle Bahia and the parking lot access road to the Golf Maintenance Building as surplus property.

Action continued on next page

2. Approve, and authorize the City Manager to execute, Contract C18-69, a Purchase and Sale Agreement by and between the City of San Clemente and San Diego Gas & Electric, providing for the sale of the 480 square foot parcel.
3. Receive revenue in the amount of \$5,000 to the Golf Operating Fund, Sale of Other Assets, Account 056-000-39120.

O. **Contract Amendment – Code Enforcement Legal Services**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to approve, and authorize the Mayor to execute, Amendment No. 3 to Contract C17-07, by and between the City of San Clemente and Silver & Wright, LLP, providing for Code enforcement legal services. This Amendment increases the contract amount by \$150,000.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

M. **Funding Authorization - 2018 Drowning Prevention Campaign Contribution**

Following recognition of the importance of the Drowning Prevention Campaign, MOTION BY MAYOR BROWN, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve the transfer of \$5,000 from Account 001-203-44900, City Council Contingency Reserve, to Account 001-226-43890, Fire Services – Other Contractual Services, as a contribution to the Orange County Task Force on Drowning Prevention.

7. **PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **Establishment of Historic Districts**

Report from the Community Development Director concerning establishment of historic districts.

Senior Planner Stiehl narrated a PowerPoint presentation entitled “Item 9A Establishment of Historic Districts” and responded to Council inquiries. A hard copy of Mr. Stiehl’s presentation is on file with the City Clerk.

Larry Culbertson, San Clemente Historical Society, spoke in support of establishing historic districts and identified their benefits; urged Council to update the historic resources survey; opined that the boundaries identified in the architectural overlay map could be used as a starting point for the establishment of historic districts; suggested that districts could be implemented for less than \$25,000.

Following discussion, Council directed Staff to agendize appointment of Council representative(s) to an Historic Preservation Ad Hoc Committee as part of its annual appointments to Boards and Committees.

B. **Community Choice Aggregation (CCA) Feasibility**

Report from the Assistant City Manager concerning Community Choice Aggregation feasibility.

Management Analyst Johnston reviewed the contents of the Administrative Report and responded to Council inquiries.

Denise Erkeneff, Surfrider Foundation South Orange County Chapter, noted that Surfrider supports Community Choice energy options; referenced letters from Hoag Hospital and Edwards Lifesciences which expressed their support for CCAs; noted there are several neighboring cities that could partner with San Clemente to significantly reduce costs.

Terry Otsuki Kwa, San Clemente, spoke on the advantages of CCA; reported that groups of cities band together to form CCAs and suggested that San Clemente partner with San Diego cities because they are all serviced by SDG&E.

Russ Cunningham, San Clemente, reported that he works for the City of Oceanside, which is working towards a renewable energy procurement goal of 75% renewable energy by 2030; explained that the Cities of Oceanside,

Carlsbad, Del Mar and Encinitas are working in partnership for a CCA feasibility study; encouraged Council to seek partnerships with other cities.

Tyler Boden, San Clemente, spoke on the benefits of CCA, which include reduced rates for customers, investment in renewables, increased revenue to the City, and grid resiliency and reliability; urged Council to seek partnerships with South Orange County and North San Diego cities for a CCA feasibility study.

Selene Lawrence, San Clemente, reported that many California cities are moving forward with CCA; stated that SDG&E has some of the highest energy rates in California and urged Council to proceed with a CCA feasibility study.

Stephanie Sekich-Quinn, San Clemente, noted that coastal communities should be at the forefront in assessing climate change impacts; opined that CCA represents the future and urged Council to move forward with the feasibility study.

Laurel Rothschild, San Clemente, reported that the Public Utilities Commission projects that 80% of California ratepayers will be under CCAs within the next five years; urged Council to seek grants from the California Energy Commission.

Hoiyin Ip, Sierra Club, stated that cities are trending toward CCAs; urged Council to support businesses that have transitioned to clean energy.

Monica Perez, San Clemente, suggested that the City will directly benefit from CCA because revenues will be directed back to the City; explained that CCA will allow the City to take advantage of grant money that is offered for renewable building projects; spoke in support of a feasibility study.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to: 1) Explore Community Choice Aggregation (CCA) via a joint powers authority option with neighboring cities to the north or south; 2) Request that Staff determine how energy savings can be used; and 3) Request that Staff contact Solana Beach and Apple Valley to determine if they are experiencing the level of savings that was anticipated.

MEETING RECESSED

Council recessed at 7:38 p.m. and reconvened at 7:43 p.m., with all members present.

C. Code Amendment – Sidewalk Construction and Repair

Report from the Public Works Director/City Engineer concerning the possibility of amending the Code of the City of San Clemente (Chapter 1208) regarding Sidewalk Construction and Repair.

Public Works Director/City Engineer Bonigut reviewed the contents of the Administrative Report and responded to Council inquiries.

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to introduce Ordinance No. 1665 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MUNICIPAL CODE CHAPTER 12.08 TO UPDATE THE REQUIREMENT FOR CONSTRUCTION OF NEW SIDEWALK OR REPAIR OF EXISTING SIDEWALK.

D. Casa Romantica Parking Lot Improvements

Report from the Assistant City Manager concerning parking lot improvements at the Casa Romantica.

Assistant City Manager Sund reviewed the contents of the Administrative Report and responded to Council inquiries.

Lew Avera, San Clemente, spoke in support of parking lot improvements at the Casa Romantica, noting that last year he damaged his car in the parking lot.

Lou Leto, San Clemente, urged Council to support Staff's recommendation; stated the Casa receives visitors from all over the world and noted that the parking lot provides the first impression to guests.

Berenika Palys, Executive Director of the Casa Romantica, reviewed programs provided by the Casa Romantica; stated that the Casa Romantica is committed to the proposed partnership to repair the parking lot.

Ruth DeNault, Casa Romantica Board of Trustees President, noted that the Casa Romantica parking lot is unsafe because of its poor condition and lack of lighting.

Sandy Wheeler, Dana Point, noted that the Casa Romantica receives visitors from all over California and urged Council to support the project.

Bonnie Koehl, San Clemente, expressed that the Casa Romantica is a premiere facility in San Clemente and recommended that Council support the parking lot project.

Jenifer Massey, San Clemente, suggested that the Casa Romantica is the jewel of the California coast and opined that a paved parking lot and lighting are greatly needed.

Larry Culbertson, San Clemente, spoke in support of Staff's recommendation; reported that visitors track sand from the parking lot into the Casa Romantica which damages the historic tile.

Val Gutzman, San Clemente, voiced concerns that the current condition of the parking lot poses a safety hazard; urged Council to pave the parking lot and install lighting.

Linda Williams, San Clemente, thanked Council for considering improvements to the parking lot.

Dan Bane, San Clemente, opined that the partnership is fair and urged Council to approve the Contract Amendment.

John Wohfiel, Oceanside, urged Council to improve the parking lot; voiced concerns with safety and liability; spoke in support of the proposed partnership plan to repair the parking lot.

Liz Kuhns, San Clemente, urged Council to support Staff's recommendation.

Diane Stiefel, San Clemente, suggested that the City should pay for the entire project, rather than partnering with the Casa Romantica.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 5-0, to:

1. Approve, and authorize the Mayor to execute, Amendment No. 2 to Contract C01-36, by and between the City of San Clemente and Casa Romantica Cultural Center, extending the leasing terms for 30 years and including a funding plan for the completion of improvements to the parking lot for \$550,000.
2. Appropriate \$227,500 from Account 057-543-45300-000-00000.
3. Appropriate \$227,500 from the General Fund Unassigned Fund Balance, Account 001-000-23430.
4. Direct Staff to explore lighting options for the Casa Romantica parking lot.

E. Prohibition on Use of Expanded Polystyrene (EPS) Food Service Ware

Report from the Utilities Director concerning City prohibition on the use of Expanded Polystyrene (EPS) food service ware.

Cynthia Mallett, Environmental Services Supervisor, narrated a PowerPoint presentation entitled “San Clemente Expanded Polystyrene (EPS) Prohibition”, and responded to Council inquiries. A hard copy of Ms. Mallett’s presentation is on file with the City Clerk.

Hoiyin Ip, Sierra Club, narrated a PowerPoint presentation that identified cities in California that restrict various types of EPS food service ware; opined that reusable or compostable food service ware should be used. A hard copy of Ms. Ip’s presentation is on file with the City Clerk.

Angela Howe-Stemrich, Surfrider Foundation, spoke on the need to reduce the usage of plastics and explained the negative effects of plastic pollution on the ecosystem and food supply; urged Council to not reverse its ordinance on the prohibition of EPS food service ware.

Denise Erkeneff, Surfrider Foundation South Orange County Chapter, reported on California cities that ban EPS food service ware; urged Council to not weaken its current ordinance.

Following discussion, Council determined to not pursue an amendment to San Clemente Municipal Code 8.30, relating to the prohibition on Expanded Polystyrene food service ware.

F. Contract Amendment – City Manager Employment Agreement

Report from the City Attorney concerning the possibility of amending the City Manager’s employment agreement.

City Manager Makshanoff left the Council Chambers at 8:40 p.m.

City Attorney Smith reported that City Manager Makshanoff left the Chambers because he is not permitted under the Political Reform Act to be involved in discussions related to his contract; reviewed the contents of the Administrative Report.

Council advised that it determined during Closed Session to eliminate any mention of severance changes from the amendment to the City Manager’s contract provisions; explained that contract changes will be limited to modifications to changing the evaluation date for the City Manager from the fall to May so as not to occur during the election period, clean-up language, and to

specify that during the 120-day period immediately following the date of a regular or special municipal election, Council shall take no action to remove the City Manager.

City Attorney Smith advised that the revised Contract Amendment has been printed and will be available to the City Clerk and any person requesting a copy.

Jim Habig, San Clemente, urged Council to not approve the proposed contract amendment.

Melissa McCready, San Clemente, suggested that the funds to pay severance will negatively impact the availability of funding for other programs and projects in the City.

Tony Rubolino, San Clemente, suggested that the proposed amendment to the City Manager's contract may violate Municipal Code Section 2.08.130 inasmuch as the Code provides for a 90-day period following an election in which the City Manager may not be removed, as opposed to a 120-day period as currently proposed.

Dan Bane, San Clemente, stated that he would have preferred for Council to have deferred action on the City Manager's contract amendment, but conveyed that he believes Council's decision was correct; thanked Councilmember Donchak and Mayor Brown for their service.

Natalie Marcus, San Clemente, voiced concern with the increase in homelessness and crime in the City, noting that drug paraphernalia has been found at parks and other public areas.

Gene James, San Clemente, stated that crime and homelessness in the City need to be addressed; suggested the need for strong law enforcement.

Heather Athan-Pechous, San Clemente, voiced concern with the proposed modification to the City Manager's contract to expand the period after an election in which the City Manager cannot be removed from 90 to 120 days.

Gail Hiduke, San Clemente, thanked Council for deciding not to increase the City Manager's severance package; voiced concern with the homeless situation, especially near schools.

Brandon Gephart, San Clemente, thanked Council for not amending the City Manager's contract as it relates to severance.

Brad Malamud, San Clemente, opined that Council violated the Brown Act by not discussing the contract amendment in public session; suggested that the proposed severance package may constitute a gift of public funds.

Jim Bieber, San Clemente, narrated a PowerPoint presentation concerning the City's legal fees. A hard copy of Mr. Bieber's PowerPoint entitled "Where is the Transparency", is on file with the City Clerk.

Following discussion, MOTION BY COUNCILMEMBER SWARTZ, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to approve, and authorize the Mayor to execute, **revised** Amendment No. 4 to Contract C14-36, by and between the City of San Clemente and City Manager James Makshanoff, relating to the City Manager's employment agreement. *Note: The approved Amendment No. 4 varies from the draft Amendment that was included in the Administrative Report in that verbiage relating to changes in the severance provisions was deleted, the evaluation date for the City Manager was changed from the fall to May, the period following an election in which Council shall take no action to remove the City Manager was changed from 90 days to 120 days, and miscellaneous clean-up language was incorporated.*

City Manager Makshanoff returned to the Council Chambers at 9:15 p.m.

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

None.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

None.

C. **City Attorney**

None.

Mayor Pro Tem Hamm and Councilmember Donchak left the meeting at 9:24 p.m.

D. **Council Members**

8th Annual Holiday Bikes for Kids Drive

Councilmember Ward reported that the Boys and Girls Club Annual Holiday Bikes for Kids Drive is underway; displayed a flyer with contact information for donations.

San Clemente High School Triton Football Team

Councilmember Ward reported that the San Clemente High School Triton Football Team played against St. John Bosco High School, the number one ranked football team in the nation, and competed well.

City Evacuation Plan

Councilmember Ward requested Staff to issue a press release concerning the City's evacuation plan.

Expression of Gratitude to San Clemente Citizens

Mayor Brown thanked the citizens of San Clemente for allowing him to serve on the City Council for the past eight years, noting that it was one of the greatest honors of his life.

12. **RESOLUTIONS/ORDINANCES**

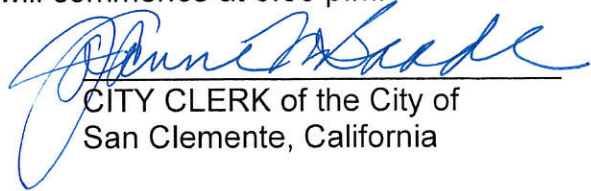
None.

13. **ADJOURNMENT**

MOTION BY MAYOR BROWN, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBER DONCHAK AND MAYOR PRO TEM HAMM ABSENT), to adjourn at 9:27 p.m. in memory of recent victims of the California wildfires and Adam Bandaruk. The next Regular Council Meeting will be held on Tuesday, December 4, 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.



MAYOR of the City of
San Clemente, California


CITY CLERK of the City of
San Clemente, California