

CITY OF SAN CLEMENTE

City Council Minutes

Regular City Council Meeting – December 4, 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 December 4, 2018 at 5:02 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 James Makshanoff, City Manager; Scott Smith, City Attorney; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk

CLOSED SESSION

A. **CONFERENCE WITH LABOR NEGOTIATORS**

Pursuant to Government Code Section 54957.6
Agency designated representative: Mayor
Unrepresented employee: City Manager

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

Existing litigation pursuant to Government Code Section 54956.9(d)(1)
Number of Cases: 2

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

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

Closed Session items continued on next page

D. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

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

Number of potential cases: 1

Jim Dahl, San Clemente, urged Council to defer tonight's Closed Session until the next Council is seated.

Gloria Dugan, San Clemente, voiced concern with any action to limit power of the new City Council.

Wendy Shrove, San Clemente, thanked Councilmember Donchak for her service; requested that the newly-elected Councilmembers be allowed to participate in tonight's Closed Session.

Brad Malamud, San Clemente, opined that Councilmembers-Elect Bane and Ferguson should have been sworn in prior to this evening's Closed Session to allow them to participate in discussions; opined that it is illegal for Council to discuss Item A in Closed Session this evening; urged Council to vote to defer tonight's Closed Session.

Gene James, San Clemente, requested that Council defer tonight's Closed Session until the new Councilmembers are sworn in.

Cord Bauer, San Clemente, suggested Council defer this evening's Closed Session until the new Council is seated.

Dawn Urbanek, San Clemente, urged Council to not meet in Closed Session before the new Councilmembers are installed.

Ashly Fox, San Clemente, suggested that the current Council is not serving the best interest of the community; urged Council to allow Councilmembers-Elect Bane and Ferguson to be part of this evening's Closed Session.

Jim Bieber, San Clemente, urged Council to not discuss the City Manager's contract before the new Council is seated and spoke in opposition to any increase in the City Manager's severance package.

City Attorney Smith reported that Item C on the Closed Session agenda relates to threats of litigation, i.e., Brad Malamud's Brown Act demand and a threat of litigation (not yet served on the City) from Coast Law Group that challenges the City's coastal regulations and Short Term Lodging Unit regulations; stated there are no time-critical issues on the Closed Session agenda and recommended that the Closed Session be tabled; narrated a PowerPoint presentation entitled "Executive Contract Items, Brown Act Issue". A hard copy of Mr. Smith's presentation is on file with the City Clerk.

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to table the Closed Session.

Brad Malamud, San Clemente, opined that the City Manager's Contract Amendment was not legally noticed; urged Council to rescind its November 20, 2018 decision concerning the City Manager's contract.

Cord Bauer, San Clemente, suggested that it is inappropriate for the current City Council to amend the City Manager's employment agreement.

Jim Bieber, San Clemente, urged Council to not authorize an enhanced severance package for the City Manager.

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to recess the meeting to the public business meeting that will commence at 6:00 p.m.

MEETING RECESSED

Council recessed at 5:37 p.m.

BUSINESS MEETING CONVENED

The City Council Business Meeting of December 4, 2018 convened at 6:02 p.m., with all members present.

INVOCATION

Mark Ambrose, Lead Pastor, Pacific Coast Church, gave the invocation.

PLEDGE OF ALLEGIANCE

Councilmember Donchak led the Pledge of Allegiance.

A. ELECTION RESULTS, ADMINISTRATION OF OATH OF ALLEGIANCE, AND ELECTION OF MAYOR AND MAYOR PRO TEMPORE

(1) Results of the General Municipal Election Held on November 6, 2018

City Clerk Baade reviewed the contents of the Administrative Report.

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 5-0, to adopt Resolution No. 18-44 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RECITING THE FACT OF THE GENERAL MUNICIPAL ELECTION HELD NOVEMBER 6, 2018, DECLARING THE RESULTS AND SUCH OTHER MATTERS AS PROVIDED BY LAW.

Mayor Pro Tem Hamm presented outgoing Councilmember Donchak and Mayor Brown with City tiles, Commendations, and Rick Delanty giclees. Mayor Brown also received a plaque in recognition of his service as Mayor during the past year.

Don Brown, San Clemente, thanked Councilmember Donchak and Mayor Brown for their service to San Clemente.

Jim Dahl, San Clemente, thanked Councilmember Donchak and Mayor Brown for their service to the community and congratulated the Councilmembers-Elect.

Sheyanne Bane, San Clemente, thanked Councilmember Donchak and Mayor Brown for their service and expressed confidence that the newly elected Councilmembers will also serve the City well.

Ken Nielsen, San Clemente, thanked Councilmember Donchak for her service.

Kathryn Stovall-Dennis, San Clemente, congratulated the incoming Councilmembers; thanked Councilmember Donchak and Mayor Brown for their service.

Susan Ritschel, San Clemente, thanked Councilmember Donchak and Mayor Brown for their contributions to the community.

Mikii Rathmann, San Clemente, thanked City Clerk Baade for her work during the election process and, on behalf of the Downtown Business Association and Pier Pride, thanked Mayor Brown and Councilmember Donchak for their contributions to the City.

Bob Baker, San Clemente, congratulated Councilmember Ward on her re-election; thanked Mayor Brown for his leadership.

John Dorey, San Clemente, thanked Councilmember Donchak and Mayor Brown for their service and acknowledged their accomplishments.

Don Hansen and Donna Kalez, San Clemente, thanked Councilmember Donchak for her service and, in particular, her work with Pier Pride.

Michael Kaupp, San Clemente, congratulated the Councilmembers-Elect and thanked Councilmember Donchak and Mayor Brown for their dedication and service to the community.

Heather Brown, San Clemente, thanked Mayor Brown and the entire Council for giving of their time for the betterment of San Clemente.

Councilmember Donchak thanked the Council, community and her husband for their support during her tenure as a member of the City Council; noted highlights during her term, and offered advice for the new Councilmembers.

Mayor Brown thanked the Council, citizens, staff, and his family for their support during his tenure as a member of the City Council.

Assemblymember Brough and Senator Bates presented Mayor Brown and Councilmember Donchak with Resolutions from the State Legislature and thanked them for their service; noted Mayor Brown's and Councilmember Donchak's many accomplishments during their tenure on the City Council.

(2) **Oath of Allegiance - Newly-Elected Councilmembers**

Senator Bates administered the Oath of Allegiance to Councilmember-Elect Dan Bane.

City Clerk Baade presented Councilmember Bane with a Certificate of Election.

Assemblymember Brough administered the Oath of Allegiance to Councilmember-Elect Laura Ferguson.

City Clerk Baade presented Councilmember Ferguson with a Certificate of Election.

City Clerk Baade administered the Oath of Allegiance to Councilmember-Elect Ward.

City Clerk Baade presented Councilmember Ward with a Certificate of Election.

Councilmembers Bane, Ferguson and Ward assumed their seats at the dais.

(3) **Election of Mayor and Mayor Pro Tempore**

City Clerk Baade opened nominations for Mayor.

Councilmember Bane nominated Steve Swartz to the office of Mayor.

Councilmember Ward nominated Chris Hamm to the office of Mayor.

There being no additional names submitted for consideration, nominations were closed.

Council took a straw poll as follows to determine the nominee with the highest level of support.

BANE:	Swartz
FERGUSON:	Swartz
HAMM:	Hamm
SWARTZ:	Swartz
WARD:	Swartz

MOTION BY COUNCILMEMBER BANE, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 4-1 (COUNCILMEMBER HAMM VOTING NOE), to elect Steve Swartz to the office of Mayor.

Mayor Swartz opened nominations for the office of Mayor Pro Tem.

Councilmember Ferguson nominated Councilmember Bane for the office of Mayor Pro Tem.

There being no additional names submitted for consideration, nominations were closed.

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR SWARTZ, CARRIED 3-2 (COUNCILMEMBER HAMM AND COUNCILMEMBER WARD VOTING NOE), to elect Dan Bane to the office of Mayor Pro Tem.

Mayor Pro Tem Bane thanked Tim Brown and Lori Donchak for their service; noted that he looks forward to working with Council on issues such as transparency and the Toll Road.

Councilmember Ferguson thanked San Clemente voters for demonstrating confidence in her; noted she looks forward to forming additional commissions and committees in an effort to enhance opportunities for community involvement.

Councilmember Ward stated that it is an honor to serve the people of San Clemente for a second term and noted Council's many accomplishments during her first term.

1. **SPECIAL PRESENTATIONS**

A. **Holiday Serenade - San Clemente High School Madrigals**

The San Clemente High School Madrigals, under the direction of CJ Daniel, performed a holiday serenade.

B. **Toll Road Update**

Mark McGuire, San Clemente, reported that he attended a meeting with Supervisor Bartlett at which she indicated that she does not support any current Toll Road alternative nor does she support managed lanes; voiced concern that Supervisor Bartlett could not say definitively that Los Patrones Parkway would remain a County arterial; asserted that the Toll Road should not extend past Oso Parkway.

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

Fire and Flood Danger in Colony Cove

Cheryl Abbott, San Clemente, voiced concern that Colony Cove is at risk for fire and floods; stated that Lot K in Sea Summit drains toward Colony Cove and noted the fire potential posed by habitat areas adjacent to Colony Cove; requested City assistance in alleviating the risk for fire and floods.

Various Requests for Council

Brad Malamud, San Clemente, urged Council to readdress the City Manager's contract amendment, consider adopting a Sunshine Ordinance, rezone the hospital property back to its original designation to end the litigation, allow individuals to appeal City decisions without cost, and allow residents to agendize topics with a petition of 20 signatures or more; opined that BBK should not serve as both the City Attorney and City litigator.

Presentation for Kathy Ward

Jeanne Reiss, San Clemente, thanked Councilmember Ward for her service and presented her with a "medal" of appreciation.

Status of Possible New Hospital Operator/Signage at Ole Hanson Beach Club

Tony Rubolino, San Clemente, requested an update on the possibility of a new hospital operator coming to San Clemente; reported on documents he received through a Public Records Request regarding signage at the Ole Hanson Beach Club.

Article in OC Weekly

Jim Bieber, San Clemente, reported on an article in OC Weekly that was attributed to a source on the City Council; stated that the reporter later retracted the article because it was inaccurate.

3. MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER FERGUSON, 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 WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to approve the Consent Calendar, with the removal of Item 6E.

- A. **City Council Minutes**

None.

- B. **Commission and Committee Minutes**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to receive and file the following:

- (1) Design Review Subcommittee Regular Meeting minutes of October 10, 2018.
- (2) Design Review Subcommittee Regular Meeting minutes of October 24, 2018.
- (3) Zoning Administrator Regular Meeting minutes of November 8, 2018.
- (4) Coastal Advisory Committee Regular Meeting minutes of September 13, 2018.

C. **Warrant Register**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to:

Approve Wire Transfers Nos. 1935 through 1936, and Warrant Nos. 554525 through 554792, paid on 11/16/18, in the amount of.....\$2,537,385.50

Approve Wire Transfers Nos. 1937 through 1940, and Warrant Nos. 554793 through 554887, paid on 11/23/18, in the amount of.....\$ 659,576.25

TOTAL WARRANT REGISTER.....\$3,196,961.75

Payroll Register

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to:

Approve Warrant No. 700 and Automatic Deposit Advises 52561 through 52847 for the period 11/5/18 through 11/18/18, paid on 11/23/18, in the amount of.....\$ 459,416.89

TOTAL PAYROLL REGISTER.....\$ 459,416.89

D. **Notice of Completion – Primary Clarifier Number 4 Rehabilitation (Sludge Collection Equipment and Tank Coating)**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to:

1. Accept the Primary Clarifier Number 4 Rehabilitation (Sludge Collection Equipment and Tank Coating), Project No. 16204, from the contractor, Tharsos, Inc.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the Primary Clarifier Number 4 Rehabilitation (Sludge Collection Equipment and Tank Coating).

Action continued on next page

3. Authorize the City Clerk to release the Payment Bond 35 days from the recordation of the Notice of Completion upon verification with the Utilities Division that no liens have been levied against the contractor, Tharsos, 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 Award – FY 2018/19 Traffic Signal Equipment Upgrades**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to:

1. Approve the plans and specifications for the FY 2018/19 Traffic Signal Equipment Upgrades, Project Nos. 17335, 18807, 18808 and 19320.
2. Approve, and authorize the City Manager to execute, Contract C18-71, by and between the City of San Clemente and International Line Builders, Inc., providing for construction of the FY 2018/19 Traffic Signal Equipment Upgrades, in the amount of \$234,443.

G. **Initiation of Zoning Amendment – Incentives for Housing Projects that Include Consolidation of Substandard Lots Within Mixed Use Zoning Districts**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to initiate a Zoning Amendment, as authorized by Municipal Code Section 17.16.020(C)(1), to provide incentives for housing projects that include consolidation of substandard lots within mixed use zoning districts.

H. **Contract Award – Street Sweeping Services**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to approve, and authorize the City Manager to execute, Contract C18-72, by and between the City of San Clemente and Sunset Property Services, providing for street sweeping services for an initial 2½ year term from January 2, 2019 through June 30, 2021, at a cost not to exceed \$1,083,631.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION**E. Contract Award – Boys and Girls Club Trash Enclosure**

Don Brown, Board Member of the Boys and Girls Club, noted that the subject trash enclosure is City property for Bonita Canyon Park; voiced concern that homeless persons sometimes live in the enclosure and noted that drug paraphernalia has been found inside the enclosure; conveyed support for the project.

Brad Malamud, San Clemente, noted that City Manager Makshanoff responded to his questions about the subject project; requested that agenda reports include more detail to adequately inform the public.

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to:

1. Approve the plans and specifications for the Boys and Girls Club Trash Enclosure, Project No. 19510.
2. Approve a supplemental appropriation of \$20,545 from the Facilities Maintenance Reserve Fund undesignated fund balance to Account 014-811-45300-000-19510 for the Boys and Girls Club Trash Enclosure project.
3. Approve, and authorize the City Manager to execute, Contract C18-70, by and between the City of San Clemente and West Gate Contractor, providing for construction of the Boys and Girls Club Trash Enclosure, in the amount of \$43,770.

7. PUBLIC HEARINGS**A. Historic Property Preservation Agreement 18-434, Lindbom House – 1815 Calle De Los Alamos**

Public Hearing to consider approving Historic Property Preservation Agreement 18-434, for the historic house located at 1815 Calle De Los Alamos.

Assistant Planner Lightfoot narrated a PowerPoint presentation entitled “Historic Property Preservation Agreement 18-434, 1815 Calle De Los Alamos (Lindbom House)” and responded to Council inquiries. A hard copy of Mr. Lightfoot’s PowerPoint is on file with the City Clerk.

Mayor Swartz opened the Public Hearing.

Larry Culbertson, San Clemente Historical Society, spoke in support of the project; stated that he is encouraged with the City's direction with regard to protecting historic resources; urged that the City utilize the services of a preservation specialist.

Rick Jones, applicant, thanked Council for the opportunity to receive Mills Act benefits.

There being no others desiring to speak on this item, the Public Hearing was closed.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to adopt Resolution No. 18-53 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING HISTORIC PROPERTY PRESERVATION AGREEMENT 18-434 FOR THE PROPERTY LOCATED AT 1815 CALLE DE LOS ALAMOS.

B. Historic Property Preservation Agreement 18-442, Westbrook Residence – 235 Avenida Miramar

Public Hearing to consider approving Historic Property Preservation Agreement 18-442, for the historic house located at 235 Avenida Miramar.

Assistant Planner Lightfoot narrated a PowerPoint presentation entitled "Historic Property Preservation Agreement 18-442, 235 Avenida Miramar (Westbrook Bungalow)" and responded to Council inquiries. A hard copy of Mr. Lightfoot's PowerPoint is on file with the City Clerk.

Mayor Swartz opened the Public Hearing.

Larry Culbertson, San Clemente Historical Society, spoke in support of the project; requested that the estimated cost for items identified for improvement as part of an Historic Property Preservation Agreement be included in the Administrative Reports.

There being no others desiring to speak on this item, the Public Hearing was closed.

Following discussion, MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to adopt Resolution No. 18-54 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING HISTORIC PROPERTY PRESERVATION AGREEMENT 18-442 FOR THE PROPERTY LOCATED AT 235 AVENIDA MIRAMAR, with the modification that the Work/Task List for the subject Historic Property Preservation Agreement be expanded to include the following task to be completed by 2028: *"Provide a clear termite inspection report (also known as a WDO Report)."*

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**

Sunshine Ordinance

Councilmember Ferguson requested that the issue of a possible sunshine ordinance be agendized. City Attorney Smith offered to provide Council with a survey of other cities concerning Sunshine Ordinances.

Orange County Transportation Authority (OCTA) - Long Range Transportation Plan

Mayor Pro Tem Bane requested that the OCTA be invited to a Council meeting to report on the Long Range Transportation Plan.

Public Safety Task Force Reactivation

Mayor Pro Tem Bane requested that the possibility of reactivating a Public Safety Task Force in the City be agendized.

City Properties Suitable for Rezoning for Hospital Use

Mayor Pro Tem Bane requested that a report that identifies properties suitable for possible rezoning for hospital use be agendized.

Welcome to New Councilmembers

Mayor Swartz welcomed the newly-elected Councilmembers.

12. **RESOLUTIONS/ORDINANCES**

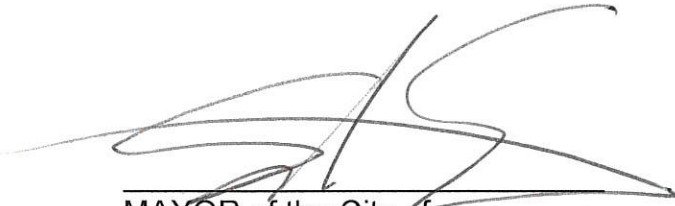
A. **Ordinance No. 1665 (Second Reading) – Sidewalk Construction and Repair**

MOTION BY MAYOR SWARTZ, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to adopt 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.

13. **ADJOURNMENT**

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to adjourn at 8:09 p.m. The next Regular Council Meeting will be held on Tuesday, December 18, 2018 in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California. Closed Session items will be discussed at 5:00 p.m. The General Session will commence at 6:00 p.m.

Note: The first Regular Council Meeting in January 2019 was previously cancelled because it falls on New Year's Day.



MAYOR of the City of
San Clemente, California



CITY CLERK of the City of
San Clemente, California