

CITY OF SAN CLEMENTE

City Council Minutes

Special and Regular Meeting – February 5, 2019

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 Special Meeting of the San Clemente City Council was called to order on February 5, 2019 at 4:30 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Swartz.

PRESENT BANE, FERGUSON, HAMM*, WARD, MAYOR SWARTZ
*Left the meeting at 6:00 p.m. (at the end of Closed Session)

ABSENT NONE

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

CLOSED SESSION (SPECIAL MEETING)

Brad Malamud, San Clemente, opined that the City could become bankrupt if it loses the Memorial Care lawsuit and suggested that litigation is not the way to bring a hospital to the City; requested that Council agendaize his concerns regarding Policy and Procedure 1203-1 (City-issued Swim, Parking and Golf Pass for Designated Retirees and City Councilmembers).

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to recess to Closed Session at 5:04 p.m. to discuss the following:

A. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Pursuant to Government Code Section 54956.9(d)(4)

Initiation of litigation

Number of potential cases: 2

B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

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

Number of Cases: 4

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

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

Closed Session items continued on next page

Case Name: 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: 8:16-CV-00852 DOC-JCG

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

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

C. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)

Number of potential cases: 4

REGULAR BUSINESS MEETING CONVENED

The City Council Business Meeting of February 5, 2019 convened at 6:10 p.m., with all members present, with the exception of Councilmember Hamm who left the meeting at 6:00 p.m.

INVOCATION

Robin Margraf, M.A., M.S., Our Lady of Fatima Church, gave the invocation.

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Bane led the Pledge of Allegiance.

1. SPECIAL PRESENTATIONS

A. Toll Road Update

Marty Benson, Encinitas, requested clarification regarding whether or not Council supports a toll road alignment through San Onofre State Beach.

Councilmember Ward displayed slides from a presentation given at a recent Capistrano Unified School District (CUSD) meeting concerning proposed toll road alignments through South Orange County and their associated impact on public schools. Councilmember Ward reported that CUSD is requesting that concerned residents contact the County and TCA regarding the proposed toll road alignments. A hard copy of Councilmember Ward's presentation is on file with the City Clerk.

City Attorney Smith provided an update on the outcome of the toll road hearing in the cases brought by the City and The Reserve Homeowners Association against the TCA, Caltrans, et al.; reported that the defendants filed a demurer in an attempt to have the City's complaint dismissed without a hearing, but the court ruled in favor of the City and The Reserve with only minor exception.

In answer to Mr. Benson's inquiry, Council confirmed that all Councilmembers oppose toll road routes that extend south of Oso Parkway.

B. **Pier Pride Foundation**

Mikii Rathmann, PierPride Foundation, provided an overview of Pier Pride's accomplishments during 2018, the third year of partnership with the City of San Clemente; displayed a video containing photographs of the various PierPride events in 2018.

C. **Update on Homeless Issues in San Clemente**

Lt. Mike Peters, Orange County Sheriff's Department, and Stephanie Ogas, Mercy House, narrated PowerPoint presentations and responded to Council inquiries concerning homeless issues in San Clemente. The presentations, entitled "City Council Homeless Update 2/2019" and "Mercy House Update" have been placed on the City's website and are on file with the City Clerk.

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

Traffic and Safety Concerns at South Ola Vista/Avenida Gaviota

Christopher Graff, San Clemente, voiced concern with speeding and safety issues near the intersection of South Ola Vista and Avenida Gaviota; noted that numerous accidents have occurred at the intersection; requested that a sign be displayed to warn the public of the curve at the intersection.

Dorothy Visser Senior Center Update

Beth Apodaca, Director, Dorothy Visser Senior Center, provided an update on upcoming activities and services offered at the Senior Center.

Public Commentary at Council Meetings (Addressing Individual Councilmembers as opposed to Council as a Body)

Jim Bieber, San Clemente, voiced concern that he was told at the last City Council meeting that members of the public must address the Council as a body rather than addressing an individual Councilmember; stated that members of the public may address individual Councilmembers.

Employee Satisfaction Survey

Tony Rubolino, San Clemente, reported that he recently met with City Manager Makshanoff to request that he investigate employee concerns identified in the Employee Satisfaction Survey; stated that he received an email from City Manager Makshanoff advising that he would not be investigating the issues raised at the meeting; urged Council to investigate the matter.

3. MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), 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**

Roca Vista Investments - Parking License Amendment

City Attorney Smith reported that at the Council meeting of January 15, 2019 during Closed Session, Council approved by unanimous vote an amendment to a Parking License Agreement with Roca Vista Investments; advised that the agreement has now been executed by all parties.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve the Consent Calendar, with the removal of Items 6A, 6F and 6O. Additionally, Item 6N was deleted from the agenda at the request of Staff.

B. Commission and Committee Minutes

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to receive and file the following:

- (1) Coastal Advisory Committee Regular Meeting minutes of December 13, 2018.
- (2) Planning Commission Adjourned Regular Meeting minutes of January 16, 2019.
- (3) Beaches, Parks and Recreation Commission Regular Meeting minutes of January 8, 2019.

C. Warrant Register

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

Approve Wire Transfers Nos. 1962 through 1963 and Warrant Nos. 555670 through 555785, paid on 1-11-19, in the amount of.....	\$1,643,782.43
Approve Wire Transfers Nos. 1964 through 1969 and Warrant Nos. 555786 through 555957, paid on 1-18-19, in the amount of.....	\$1,242,617.38
Approve Wire Transfers Nos. 1970 through 1972 and Warrant Nos. 555958 through 556133, paid on 1-25-19, in the amount of.....	\$2,769,088.78
TOTAL WARRANT REGISTER.....	\$5,655,488.59

Payroll Register

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

Approve Warrant Nos. 705 through 706 and Automatic Deposit Advises 53677 through 53960, for the period of 12/31/18 through 1/13/19, paid on 1/18/19, in the amount of.....	\$ 454,401.52
TOTAL PAYROLL REGISTER.....	\$ 454,401.52

D. **Proposed Animal Shelter Overnight Parking Restriction - City-Owned Parking Lot at 221 Avenida Fabricante**

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Restrict parking between 8:00 p.m. and 6:00 a.m. in the City-owned Animal Shelter parking lot located at 221 Avenida Fabricante.
2. Adopt Resolution No. 19-02 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MASTER TRAFFIC RESOLUTION NO. 1846, ESTABLISHING 'RESTRICTED PARKING AREAS' WITHIN CITY-OWNED PARKING LOT ON AVENIDA FABRICANTE.

E. **Proposed Senior Center Overnight Parking Restriction - City-Owned Parking Lot at 100 and 118 Avenida Rosa**

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Restrict parking between 10:00 p.m. and 6:00 a.m. in the City-owned parking lot at 100 and 118 Avenida Rosa which serves the Senior Center located at 117 Avenida Victoria.
2. Adopt Resolution No. 19-03 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MASTER TRAFFIC RESOLUTION NO. 1846, ESTABLISHING 'RESTRICTED PARKING AREAS' WITHIN CITY-OWNED PARKING LOTS ON AVENIDA ROSA.

G. **Contract Award – Municipal Golf Course Cart Path Repair**

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Approve the plans and specifications for the Municipal Golf Course Cart Path Repair, Project No. 29804.
2. Approve, and authorize the City Manager to execute, Contract C19-23, by and between the City of San Clemente and Gentry General Engineering, Inc., providing for construction of the Municipal Golf Course Cart Path Repair, in the amount of \$194,662.25.

H. **Assignment, Assumption and Consent Agreement – San Clemente Trolley Vehicle Operation**

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve, and authorize the Mayor to execute, an Assignment, Assumption and Consent Agreement (Contract C19-24), to formally approve assignment of the existing San Clemente Trolley vehicle operation agreement from Professional Parking to LAZ Parking California, LLC.

I. **Notice of Completion – 910 Calle Negocio Building Third Floor Conference Room**

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Accept the 910 Calle Negocio Building Third Floor Conference Room (Project No. 18804), from the contractor, Corner Keystone Construction Corporation.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the 910 Calle Negocio Building Third Floor Conference Room.
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 Corner Keystone Construction Corporation.
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.

J. **Contract Award – FY 2018 Sidewalk Repair Program**

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Approve the plans and specifications for the FY 2018 Sidewalk Repair Program, Project No. 28303.
2. Approve, and authorize the City Manager to execute, Contract C19-25, by and between the City of San Clemente and CT&T Concrete Paving, Inc., providing for the FY 2018 Sidewalk Repair Program, in the amount of \$55,383.

K. Change Order – Emergency Protection of Linda Lane Pump Station

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Make a finding that an emergency exists due to the potential failure of an existing sewer pump station and that the situation requires immediate action to prevent or mitigate impairment to property and public services, that might otherwise occur if required to incur delays attributed to the typical engineering design and public competitive bidding process.
2. Declare that the public interest and necessity demand the immediate expenditure of public funds to safeguard public health.
3. Approve a supplemental appropriation in the amount of \$75,000 to Account 054-476-45300-000-16209 from the Sewer Fund Depreciation Reserve.
4. Ratify the Emergency Construction Contract Change Order with Wright Construction Engineering Corporation for up to \$50,000 for the Emergency Protection for Linda Lane Pump Station, Project No.16209.

L. Records Destruction

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to adopt Resolution No. 19-04 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE DESTRUCTION OF CERTAIN CITY RECORDS AS PROVIDED BY SECTION 34090 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.

M. Fee Waiver – Heritage of San Clemente Foundation's Use of Richard T. Steed Park

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve a one-time waiver of field rental fees for the Heritage of San Clemente Foundation's 2nd Battalion 4th Marines softball tournament to be held at Richard T. Steed Park on February 15, 2019.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION**A. City Council Special/Adjourned Regular and Regular Meeting Minutes of January 15, 2019**

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to approve the Special/Adjourned Regular and Regular City Council Meeting Minutes of January 15, 2019, with the amendment that Page 20, under the heading that reads “Community Choice Energy”, be revised to read as follows:

“In response to an inquiry by Councilmember Ferguson, City Manager Makshanoff indicated that Management Analyst Johnston will provide Council with an update concerning the status of the City’s efforts with regard to Community Choice Energy”.

F. Purchase of Prefabricated Restroom – Vista Bahia Park Restroom Replacement

Principal Civil Engineer/Asset Manager Knatz explained the basis for the \$343,425 cost of the prefabricated restroom.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Approve, and authorize the City Manager to execute, the National Purchasing Cooperative Interlocal Participation Agreement (Contract C19-21), providing for the purchase of the Bonito Canyon and Vista Bahia Restroom Replacements.
2. Authorize the City Manager to approve a transfer in the amount of \$200,000 from Account 001-635-45300-000-17511 (Bonito Canyon Park) to Account 001-635-45300-000-17512 (Vista Bahia) for the purchase and installation of one prefabricated restroom and improvements for Vista Bahia Park.
3. Approve, and authorize the City Manager to execute, Contract C19-22 by and between the City of San Clemente and Public Restroom Company, providing for the purchase of one prefabricated restroom for Vista Bahia Park, in the amount of \$343,425.
4. Approve an as-needed contingency of \$15,000 for the Vista Bahia restroom purchase contract.
5. Direct staff to include \$200,000 in the Fiscal Year 2020 Capital Improvement Program budget to supplement existing funding for the Bonito Canyon Restroom replacement project.

N. **Contract Amendment - Consultant Assistance for Preparation of Local Coastal Program and Coastal Resiliency Plan**

This item was deleted from the agenda at the request of Staff.

O. **Hours of Operation of Public Restrooms Located West of the I-5**

Recreation Manager Wylie responded to Council inquiries relative to the possibility of aligning the subject restroom hours (or at least the hours for the restroom on the pier), with the hours that the beach is open; explained that the pier restroom is open until 11:30 p.m.

Jim Bieber, San Clemente, opined that the City cannot afford to allocate additional funding for Park Rangers due to the cost that the City is paying for lawsuits.

Following discussion, MOTION BY COUNCILMEMBER FERGUSON, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to:

1. Approve the locking of all public restrooms west of the I-5 on City beaches and in City parks from 10:00 p.m. to 6:30 a.m. on a regular basis.
2. Approve a supplemental appropriation of \$6,740 to Account 001-624-41030-000-00000 for part-time Park Ranger salaries.

7. **PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **Recreation Sports Partnership Agreement - San Clemente Youth Rugby**

Report from the Beaches, Parks and Recreation Department concerning the possibility of the City entering into a Recreation Sports Partnership Agreement with San Clemente Youth Rugby.

Recreation Manager Wylie reviewed the contents of the Administrative Report and responded to Council inquiries.

Following discussion, MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to grant Silver Partnership status to San Clemente Youth Rugby with a one-year agreement.

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

None.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

Assistant City Manager Sund reported that the 2018 Comprehensive Annual Financial Report (CAFR) is available for review on the transparency page of the City's website.

C. **City Attorney**

None.

D. Council Members**Community Town Hall Concerning Homeless Issues**

Councilmember Ferguson suggested the possibility of the City hosting a Community Town Hall meeting concerning homeless issues. Council agreed that Councilmember Ferguson and Mayor Pro Tem Bane will work with Staff and the Human Affairs Committee to establish goals for the meeting. This matter will be agendized for a future Council meeting.

Employee Satisfaction Survey

Mayor Pro Tem Bane suggested the possibility of retaining a third party to conduct an Employee Satisfaction Survey. Staff (through the League of Cities) and Mayor Pro Tem Bane will identify possible consultants to conduct the survey. This proposal will be discussed during the FY 2019/20 budget deliberations.

Senate Bill 50 (Wiener)

Councilmember Ward requested that Staff research SB 50 (Wiener), which relates to high-rise development near major transit stops, and email Council with information concerning the bill. If it is believed that the passage of the bill could have negative implications for San Clemente, SB 50 will be agendized to enable Council to take a position on the legislation.

12. RESOLUTIONS/ORDINANCES

None.

13. ADJOURNMENT

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to adjourn at 8:17 p.m. The next Regular Council Meeting will be held on Tuesday, February 19, 2019 in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California. Closed Session items will be considered at 5:00 p.m. The Regular Business Meeting will commence at 6:00 p.m.

CITY CLERK of the City of
San Clemente, California

MAYOR of the City of
San Clemente, California