

CITY OF SAN CLEMENTE

City Council Minutes

Regular Meeting – March 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 Regular Meeting of the San Clemente City Council was called to order on March 5, 2019 at 5:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Swartz.

PRESENT BANE, FERGUSON, HAMM, WARD, MAYOR SWARTZ

ABSENT NONE

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

CLOSED SESSION

Memorial Care Lawsuit

Brad Malamud, San Clemente, voiced concern that the City could become bankrupt if it loses the MemorialCare lawsuit; urged Council to settle the lawsuit if the City Attorney is not 100% confident that the City will prevail in the litigation; recommended that BBK indemnify the City if the lawsuit is unsuccessful, or receive a 20% bonus if the lawsuit is successful.

Request for Fraud Investigation - Activities Relating to SR-241 Extension

Dawn Urbanek, San Clemente, urged Council to request that the U.S. Attorney General investigate for fraud and collusion the County of Orange, Rancho Mission Viejo, TCA, Capistrano Unified School District and San Diego Water Board with regard to activities relating to the extension of SR-241; stated that the County of Orange is administratively approving changes to the subject project illegally without environmental review. Documentation provided by Ms. Urbanek is on file with the City Clerk.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to recess to Closed Session 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

Closed Session items continued on next page

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: 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

B. PUBLIC EMPLOYEE EVALUATION

Pursuant to Government Code Section 54957
Employee: City Attorney

C. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)
Number of potential cases: 1

BUSINESS MEETING CONVENED

The City Council Business Meeting of March 5, 2019 convened at 6:05 p.m., with all members present.

INVOCATION

Jim Davis, Sr. Chaplain, Orange County Sheriff-Coroner, gave the invocation.

PLEDGE OF ALLEGIANCE

Councilmember Hamm led the Pledge of Allegiance.

1. SPECIAL PRESENTATIONS

A. Toll Road Update

None.

B. Orange County Mosquito and Vector Control District Report

Michelle Schumacher, the City's representative to the Orange County Mosquito and Vector Control District, provided an update concerning vector issues.

C. **Police Services Update**

Lt. Peters, San Clemente Police Services Chief, narrated a PowerPoint presentation concerning Police Services issues and statistics; responded to Council inquiries. A hard copy of Lt. Peters' presentation is on file with the City Clerk.

Bob Baker, San Clemente, recognized Lt. Peters on his promotion and thanked him for his service to San Clemente.

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

Traffic/Safety Concerns on Ola Vista at Avenida Gaviota

Scott Morton, San Clemente, reported that numerous traffic accidents have occurred at the intersection of Avenida Gaviota and Ola Vista; requested that speed bumps, or other traffic-calming devices, be installed.

Violation of San Diego Campaign Ordinance

Bob Baker, San Clemente, reviewed a Stipulation Decision and Order by the San Diego Ethics Commission relating to a violation of San Diego's campaign ordinance; noted the respondent speaks regularly under Oral Communications.

Personal Attacks During Oral Communications

Brad Malamud, San Clemente, suggested that commentary offered during Oral Communications should relate to City issues/policies and not involve personal attacks.

OC Weekly Article

Jim Bieber, San Clemente, narrated a PowerPoint presentation concerning an inaccurate OC Weekly article and the editor's associated apology. A hard copy of Mr. Bieber's presentation is on file with the City Clerk.

3. MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER 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**

City Attorney Smith noted that no reportable action was taken during this evening's Closed Session.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to approve the Consent Calendar, with the removal of Item 6A.

B. **Commission and Committee Minutes**

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

- (1) Minutes of the Regular Meeting of the Human Affairs Committee of February 12, 2019.
- (2) Minutes of the Regular Meeting of the Design Review Subcommittee of December 12, 2018.
- (3) Minutes of the Regular Meeting of the Design Review Subcommittee of January 23, 2019.
- (4) Minutes of the Regular Meeting of the Zoning Administrator of February 7, 2019.
- (5) Minutes of the Regular Meeting of the Zoning Administrator of February 21, 2019.

C. **Warrant Register**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to approve the following:

Wire Transfers Nos. 1980 through 1987 and Warrant Nos. 556439 through 556667, paid on 2-15-19, in the amount of.....\$2,881,407.13

Wire Transfers Nos. 1988 and Warrant Nos. 556668 through 556748, paid on 2-22-19, in the amount of.....\$1,582,874.18

TOTAL WARRANT REGISTER.....\$4,464,281.31

Payroll Register

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to approve the following:

Warrant Nos. 708 through 710 and Automatic Deposit Advises 54235 through 54505, for the period of 1/28/19 through 2/10/19, paid on 2/15/19, in the amount of.....\$ 472,686.04

TOTAL PAYROLL REGISTER.....\$ 472,686.04

D. **Contract Amendment – Water Reclamation Plant Efficiency Study**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to approve, and authorize the City Manager to execute, Amendment No. 1 to Contract C18-62, by and between the City of San Clemente and Trussell Technologies, Inc., providing for engineering services for the Water Reclamation Plant Efficiency Study, Project No. 39202. This amendment increases the contract amount from \$204,034 to an amount not to exceed \$232,664, a maximum increase of \$28,630.

E. **Wyland National Mayor’s Challenge for Water Conservation**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to approve and authorize the City’s participation in the National Mayor’s Challenge and the Mayor’s signature on the online letter of support.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

A. **City Council Minutes**

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to approve the Special and Regular City Council Meeting minutes of February 19, 2019, with the direction that Staff verify the accuracy of the vote on Item 6H (contract award for legislative advocacy services).

(Note: Please refer to the Council minutes of March 19, 2019 relative to the final disposition of the February 19, 2019 minutes.)

7. **PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

A. **Opioid Epidemic Contingency Fee Agreement**

Report from the City Attorney concerning Council consideration of an Opioid Epidemic Contingency Fee Agreement.

Dick Ackerman, Andrews & Thornton, reported that any funds the City receives from settlements or judgments relating to the subject litigation will not be restricted as to use.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 4-1 (COUNCILMEMBER HAMM VOTING NOE), to approve, and authorize the Mayor to execute, Contract C19-27, an Engagement to Represent, by and between the City of San Clemente and the law firms of Robins Kaplan LLP and Andrews & Thornton, providing a contingent fee agreement with respect to litigation the consortium attorneys will pursue with regard to the opioid epidemic.

Mayor Pro Tem Bane left the Council Chambers at 6:53 p.m.

B. **Revised Local Coastal Program Land Use Plan Amendment (LUPA) Resolution**

Report from the Community Development Director regarding a revised Local Coastal Program Land Use Plan Amendment (LUPA) Resolution.

Community Development Director Gallardo-Daly reviewed the contents of the Administrative Report and responded to Council inquiries.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0 (MAYOR PRO TEM BANE ABSENT), to adopt **REVISED** Resolution No. 18-57 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, TO ADOPT THE LAND USE PLAN AMENDMENT (LUPA) AND AUTHORIZE THE SUBMITTAL OF THE LOCAL COASTAL PROGRAM LAND USE PLAN AMENDMENT REGARDING THE DEFINITION OF MAJOR REMODEL IN CHAPTER 7 TO THE CALIFORNIA COASTAL COMMISSION FOR PROCESSING.

Mayor Pro Tem Bane returned to the Council Chambers at 6:55 p.m.

9. **NEW BUSINESS**

A. **Policy and Procedure 1002-1 (City's Vehicle Use Policy)**

Report from the Assistant City Manager concerning the City's Vehicle Use Policy.

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

Council requested that Staff research the vehicle policies in use by Orange County cities from Irvine south and propose updates to San Clemente's Policy to ensure it is comprehensive. Council directed that Section 4.5 of the Policy reference the disciplinary action that will be taken if employees are found to be in violation of the Policy.

B. Code Amendment - Enforcement of Camping Ordinances

Report from the City Attorney concerning the possibility of amending Section 8.86.040 of the San Clemente Municipal Code relating to enforcement of camping ordinances.

City Attorney Smith reviewed the contents of the Administrative Report and responded to Council inquiries.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to introduce Ordinance No. 1671, entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA ADDING SECTION 8.86.040 TO THE SAN CLEMENTE MUNICIPAL CODE RELATING TO ENFORCEMENT OF CAMPING ORDINANCES.

10. ORAL COMMUNICATIONS (PART 2)**Commercial Vehicle Ordinance**

George Gregory, San Clemente, opined that the City's Commercial Vehicle Ordinance is unfair and selectively enforced; requested that Council agendaize the Commercial Vehicle Ordinance for possible revisions.

11. REPORTS**A. Commissions and Committees**

None.

B. City Manager**Sand Pushing on Beach**

City Manager Makshanoff reported that Maintenance crews are currently pushing sand at the beaches, noting that work is being done in accordance with the tides and sand availability.

Restaurant Application for Ichibiri Site

City Manager Makshanoff reported that an application for a Mexican restaurant is under review in the Community Development Department, explaining that the restaurant proposes to locate at the former Ichibiri site at North Beach.

Municipal Water District of Orange County (MWDOC) - "Water is Life" Poster Contest

City Manager Makshanoff reported that MWDOC is conducting a "Water is Life" poster contest and encouraged school-age children to obtain more information from MWDOC's website.

Long Term Financial Plan (LTFP)

City Manager Makshanoff reported that Council will meet on March 11, 2019 at 4:00 p.m. in the Council Chambers to consider the LTFP.

C. City Attorney

None.

D. Council Members**Street Sweeping Ordinance**

It was noted that Council will consider the City's street-sweeping ordinance when the City's street-sweeping contract is nearing expiration.

Commercial Vehicle Ordinance

Councilmember Ferguson requested that the City of San Clemente's commercial vehicle ordinance be amended. Following discussion, Council appointed Councilmembers Ferguson and Hamm to a subcommittee to determine whether Council should consider revising the Commercial Vehicle Ordinance. Mayor Pro Tem Bane will meet with George Gregory to discuss Mr. Gregory's concerns about the Ordinance.

The Reserve at Rancho Mission Viejo

Councilmember Hamm reported that he toured the Reserve at Rancho Mission Viejo (Donna O'Neill Land Conservancy); urged residents to participate in the Reserve's events and activities.

Principal for a Day

Mayor Swartz reported that he participated in the Principal for a Day program through Capistrano Unified School District; advised that he acted as Principal for San Clemente High School and that lunch was prepared by the cuisine class at San Clemente High School.

Wyland National Mayors Challenge for Water Conservation

Mayor Swartz reported that the City will participate in the Wyland National Mayors Challenge for Water Conservation.

12. RESOLUTIONS/ORDINANCES**A. Ordinance No. 1668 (Second Reading) – Accessory Dwelling Units (ADUs)**

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to adopt Ordinance No. 1668 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, FOR A CITY-INITIATED AMENDMENT (ZA 18-243) OF THE CITY OF SAN CLEMENTE MUNICIPAL CODE TITLE 17 FOR ACCESSORY DWELLING UNITS.

B. Ordinance No. 1669 (Second Reading) – Floodplain Management Regulations

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to adopt Ordinance No. 1669 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MUNICIPAL CODE CHAPTER 15.76 TO UPDATE THE FLOODPLAIN MANAGEMENT CODE TO MEET THE MINIMUM REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM.

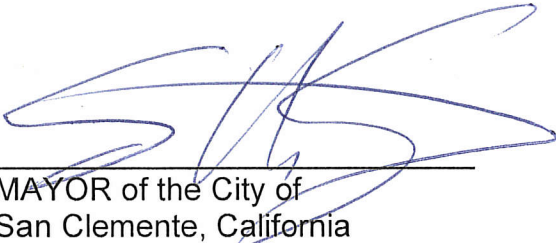
C. Ordinance No. 1670 (Second Reading) – City Council Parliamentary Procedures

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to adopt Ordinance No. 1670 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, REPEALING SECTION 2.04.050 OF THE CODE OF THE CITY OF SAN CLEMENTE RELATING TO CITY COUNCIL PROCEEDINGS BEING GOVERNED UNDER "ROBERT'S RULES OF ORDER".

13. **ADJOURNMENT**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to adjourn at 7:19 p.m. to an Adjourned Regular Council meeting to be held on Monday, March 11, 2019 at 4:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, for the purpose of conducting a workshop on the Long Term Financial Plan (LTFP).

The next Regular Council Meeting will be held on Tuesday, March 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.



MAYOR of the City of
San Clemente, California



CITY CLERK of the City of
San Clemente, California