

# CITY OF SAN CLEMENTE

## City Council Minutes

### Regular Meeting – March 19, 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 19, 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** Erik Sund, Assistant City Manager; Scott Smith, City Attorney; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk.

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#### **CLOSED SESSION**

**A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**  
Existing litigation pursuant to Government Code section 54956.9(d)(1)  
Number of Cases: 5

Case Name: Gary Lovrien v. City of San Clemente  
Workers Compensation Appeals Board Case Number: ANA0303676

Case Name: Capistrano Shores, Inc. v. City of San Clemente  
Case Numbers: OCSC 30-2014-00709987 and 30-2014-00726889

Case Name: Orange County Catholic Worker v. Orange County, et al.  
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: MemorialCare Services, et al. v. City of San Clemente  
Case Number: 8:16-CV-00852 DOC-JCG

*Closed Session items continued on following page*

- B. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**  
Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)  
Number of potential cases: 3
  
- C. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**  
Pursuant to Government Code Section 54956.9(d)(4)  
Initiation of litigation  
Number of potential cases: 1
  
- D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION**  
Pursuant to Government Code section 54957  
Title: City Attorney
  
- E. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**  
Pursuant to Government Code Section 54956.8  
Property: 2.2 acre section of and 80 acre parcel on the southwest corner of Avenida La Pata and Vista Hermosa  
APN: 678-163-01  
Agency negotiator: Assistant City Manager  
Negotiating parties: n/a  
Under Negotiation: Terms for future purchase or lease of surplus property

**BUSINESS MEETING CONVENED**

The City Council Business Meeting of March 19, 2019 convened at 6:01 p.m., with all members present.

**INVOCATION**

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

**PLEDGE OF ALLEGIANCE**

Councilmember Ward led the Pledge of Allegiance.

**INTRODUCTION OF NEW POLICE CHIEF**

Assistant City Manager Sund introduced Lt. Edward Manhart, the City's new Chief of Police Services, and reviewed his background.

Lt. Manhart thanked Council for the opportunity to serve as the City's new Chief of Police Services.

1. **SPECIAL PRESENTATIONS**

A. **Toll Road Update**

Mayor Pro Tem Bane reported that at the last TCA meeting, Councilmember Ferguson and he made a motion to pursue a third-party financial audit and to cease all of the TCA's consulting contracts; noted that the motion was made as a result of the recent Los Angeles Times article concerning the TCA's financial mismanagement; related that the TCA board voted against the motion, but will consider both issues at its next meeting; reported that the City and The Reserve filed a motion to bifurcate the trial in hopes of expediting some of the outstanding issues.

B. **PierPride Foundation – Replacement Educational Signs on the San Clemente Municipal Pier**

Eileen Kawas, PierPride Board President, narrated a PowerPoint presentation entitled “San Clemente Pier Signage Improvements”, concerning replacement educational signage on the San Clemente pier; responded to Council inquiries. A hard copy of Ms. Kawas’ presentation is on file with the City Clerk.

During the course of discussion, Staff noted that the signage before Council at this time is limited to signage to replace existing signage on the pier on a like-for-like basis; explained that additional signage and proposals from PierPride will be processed through the Beaches, Parks and Recreation Commission.

Council accepted the like-for-like signage as presented by PierPride and requested that the Beaches, Parks and Recreation Commission consider a possible City Policy with regard to advertising on public property under its purview. The resulting report from Beaches, Parks and Recreation is to be agendaized for Council consideration at a later date.

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

**Enforcement of Camping Ordinance/Homeless Issues**

Mary Franta, San Clemente, urged Council to determine a course of action to address the homeless situation at North Beach; suggested that a temporary homeless shelter could be established promptly via installation of a large military-style tent at the campground at San Mateo or Calafia or through the lease of a vacant building or trailer.

Gene James, San Clemente, suggested that the homeless situation at North Beach could be alleviated by installing lights, decomposed granite and sharp vegetation, as well as hiring private security.

MaryAnn Dabney, San Clemente; questioned whether the City will be required to house homeless individuals who are not from San Clemente or who have committed violent crimes.

Brent Conseline, COO of Business Initiatives of Berkshire Hathaway HomeServices California Properties, reported that homeless individuals camp outside Berkshire Hathaway's San Clemente office and relieve themselves in front of the business; stated that Berkshire Hathaway is willing to help the City address the homeless issue.

Maura Mikulec, Capistrano Beach, reported that she had the opportunity to speak with local homeless people; summarized the individual circumstances associated with some of those individuals.

Craig Neal, San Clemente, voiced concern with drug problems within the City; suggested that enforcing the prohibition against drug dealing at North Beach and Mariposa would alleviate the problem.

Brad Malamud, San Clemente, opined that Closed Session Items B and C were illegally agendized because the names of the parties associated with the anticipated litigation were not disclosed and a statement relative to the circumstances for the anticipated litigation was not posted; urged Council to establish a temporary homeless shelter.

William Elder, San Clemente, opined that the homeless situation at North Beach jeopardizes public safety; requested that Council direct steps to clean up North Beach and deploy additional police resources to the area.

David Thompson, San Clemente, voiced concern that some individuals harass homeless persons; stated he does not support enabling the homeless, but opposes vigilantism.

### **Residential Bee Keeping**

Anna Maria Desipris, San Clemente, urged Council to update its Ordinance to allow residential bee keeping; provided a copy of a suggested ordinance which is on file with the City Clerk.

**Camino de los Mares Beautification**

Karen Kerwin, San Clemente, narrated a PowerPoint presentation on behalf of resident Eva O’Keefe, entitled “Request for Los Mares Improvement & Beautification Program March 19, 2019”. A hard copy of Ms. Kerwin’s presentation is on file with the City Clerk.

3. MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, 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**

**Update on the City’s Camping Ordinance**

City Attorney Smith noted that no reportable action was taken during this evening’s Closed Session; reiterated Council’s commitment to follow the law with regard to the Martin v. Boise case; explained that the City must offer homeless individuals local shelter beds in order to enforce laws relating to sleeping or camping in public, but noted that the Boise decision does not allow homeless persons to damage or create nuisances on public property; advised that Council directed the City Attorney to address the provision of adequate interim shelter and that Police Services enforce City Ordinances after interim shelter is available.

6. **CONSENT CALENDAR**

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to approve the Consent Calendar, with the removal of Items 6A(1), 6B(2) and 6I.

A(2). **City Council Minutes**

(MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to approve the Regular City Council Meeting minutes of March 5, 2019.

**B. Commission and Committee Minutes**

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

- (1) Minutes of the Regular Study Session of the Planning Commission of March 6, 2019.

**C. Warrant Register**

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

Wire Transfers Nos. 1989 through 1995  
 and Warrant Nos. 556749 through  
 556879, paid on 3-1-19, in the amount of.....\$2,765,232.34

Wire Transfers Nos. 1996 through 1998  
 and Warrant Nos. 556880 through  
 557030, paid on 3-8-19, in the amount of.....\$3,090,646.62

TOTAL WARRANT REGISTER.....\$5,855,878.96

**Payroll Register**

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

Warrant Nos. 711 through 712  
 and Automatic Deposit Advises 54506  
 through 54796, for the period of 2/11/19  
 through 2/24/19, paid on 3/1/19, in  
 the amount of.....\$ 476,921.34

TOTAL PAYROLL REGISTER.....\$ 476,921.34

D. **Contract Award – Replacement of Existing Primary Clarifier, Distribution Box and Grit Chamber Covers and Effluent Channel Gratings**

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

1. Approve the plans and specifications for the Replacement of Existing Primary Clarifier, Distribution Box and Grit Chamber Covers and Effluent Channel Gratings, Project No. 25206.
2. Approve, and authorize the Mayor to execute, Contract C19-29, by and between the City of San Clemente and Environmental Construction, Inc., providing for replacement of existing primary clarifier, distribution box and grit chamber covers and effluent channel gratings, in the amount of \$799,610.

E. **Final Parcel Map 2014-174, Mirasol Condominiums at 132 W. Escalones**

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

1. Accept on behalf of the City of San Clemente, the water rights within Final Parcel 2014-174 as dedicated.
2. Accept on behalf of the City of San Clemente the 4' wide sidewalk and public access easement as dedicated.
3. Approve Final Parcel Map 2014-174 as it conforms to the requirements set forth in the Subdivision Map Act and the previously approved Tentative Parcel Map.
4. Authorize the Public Works Director/City Engineer to execute the Final Parcel Map.
5. Authorize the City Clerk to execute and submit the Final Parcel Map for recordation with the County of Orange Recorder's Office.

**F. Contract Award – Reservoir 10 & 6 Water Line**

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

1. Approve the plans and specifications for the Reservoir 10 & 6 Water Line, Project No. 15401.
2. Approve, and authorize the Mayor to execute, Contract C19-30, by and between the City of San Clemente and Gwinco Construction & Engineering, Inc., providing for Reservoir 10 & 6 Water Line (Project No. 19410), in the amount of \$577,727.
3. Approve, and authorize the Mayor to execute, Contract C19-31, by and between the City of San Clemente and Dudek, providing for archeological, paleontological and Native American monitoring services for Reservoir 10 & 6 Water Line (Project No. 19410), in the amount of \$24,650.

**G. Replacement of Fleet Vehicle Numbers 1054, 1069 and 1096**

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

1. Approve the purchase of three 2019 Ford 250 trucks from Fairview Ford from the Fleet Replacement Reserve for replacement of fleet vehicle numbers 1054, 1069 and 1096.
2. Authorize a supplemental appropriation in the amount of \$71,520 to Fleet Automotive Account 065-824-45600 from the Fleet Replacement Reserve Fund balance.

**H. 2018 General Plan Progress Report**

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

1. Adopt Resolution No. 19-06 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ACCEPTING THE GENERAL PLAN 2018 PROGRESS REPORT.
2. Direct Staff to submit the 2018 General Plan Progress Report to the State as required by law.



J. **Sports Partnership Agreement (Silver Partnership) - San Clemente Youth Rugby**

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to approve, and authorize the Mayor to execute, Contract C19-32, a sports partnership agreement by and between the City of San Clemente and San Clemente Youth Rugby, providing for Silver Partnership for a one-year period.

**ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION**

A(1). **City Council Minutes of Special and Regular Meeting of February 19, 2019**

Council referenced Item 6-H on the February 19, 2019 City Council minutes relating to a contract amendment for legislative advocacy services. While the vote on that item accurately reflected the votes that occurred at the February 19, 2019 meeting, Council noted that the vote did not correctly reflect the intended votes by two Councilmembers due to confusion concerning the amended motion on the floor. Council determined to reconsider the contract amendment at its meeting of April 2, 2019 to enable Councilmembers to re-vote so that their intended positions could be memorialized in the record.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to agendaize Item 6-H (contract amendment relating to legislative advocacy services) from the February 19, 2019 City Council meeting for reconsideration at the April 2, 2019 City Council meeting.

MOTION BY MAYOR SWARTZ, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to approve the Special and Regular City Council Meeting minutes of February 19, 2019 as written, with the understanding that a notation will be added at the end of Item 6-H to indicate that Council voted at its meeting of March 19, 2019 to reconsider the contract amendment relating to legislative advocacy services at its meeting of April 2, 2019.

B(2). **Planning Commission Minutes of Regular Meeting of March 6, 2019**

Council referenced Item 8-A (Shorecliffs Senior Housing at 501 Avenida Vaquero) on the Planning Commission minutes of March 6, 2019 and discussed the possibility of seeking additional information relative to the project's compliance with the General Plan as it relates to the requirement that new projects pay the public safety costs associated with the development.

Mark McGuire, San Clemente, noted that plans for the Shorecliffs Senior Housing complex have been in progress for ten years; explained that the complex is for active seniors and that extensive ambulance services is not anticipated; noted that the project's approval will be conditioned on extensive Code Enforcement requirements, such as security and management plans; noted that no one opposed the proposal and urged Council to grant approval at this meeting so as not to delay the project.

Brad Malamud, San Clemente, opined that Council is not abiding by Rosenberg's Rules of Order, which specify that a motion should be placed on the floor prior to discussion.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 3-2 (MAYOR PRO TEM BANE AND COUNCILMEMBER FERGUSON VOTING NOE), to continue the Planning Commission Minutes of March 6, 2019 to the City Council meeting of April 2, 2019 to enable Staff to report on Item 8-A (Shorecliffs Senior Housing rental apartment complex at 501 Avenida Vaquero) as it relates to 1) the project's compliance with the General Plan provision pertaining to payment of public safety costs, 2) Code Enforcement conditions associated with the project's entitlements, and 3) parallels between the subject project and the previously-approved Raya's Paradise Residential Care Center project.

I. **Contract Amendment – Lease and Operating Agreement for Use of the Ole Hanson Beach Club**

This item was removed from the Consent Calendar at the request of a member of the public. The speaker, however, was not present when invited to address Council.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to approve, and authorize the Mayor or City Manager to execute, Amendment No. 1 to Contract C16-32, a lease and operating agreement, by and between the City of San Clemente and 24 Carrots LLC. This Amendment provides the tenant with exclusive use of the Ole Hanson Beach Club exterior lawn area on weekends.

7. **PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **Contract Award – Janitorial Services**

Report from the Public Works Director/City Engineer concerning a contract award for janitorial services at City facilities.

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

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

1. Approve, and authorize the City Manager to execute, Contract C19-33, a maintenance agreement, by and between the City of San Clemente and OmniClean, providing for janitorial services for the period of April 1, 2019 through June 30, 2021, for a maximum amount of \$943,195.53.
2. Approve a supplemental appropriation in the amount of \$48,907 from the General Fund undesignated fund balance to the General Fund janitorial services program line items in Programs 617, 635, and 636.
3. Approve a supplemental appropriation in the amount of \$3,200 from the Water Fund undesignated fund balance to Account 052-461-43480.
4. Approve a supplemental appropriation in the amount of \$3,200 from the Sewer Fund undesignated fund balance to Account 054-471-43480.

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

**Homeless Situation**

Wendy Shrove, San Clemente, opined that the homeless issue should have been discussed in open session, rather than Closed Session; spoke in support of an emergency temporary shelter, noting that young, local people who need help have no resources; provided a handout to Council concerning homeless shelters in other municipalities. A hard copy of Ms. Shrove's handout is on file with the City Clerk.

Maura Mikulec, Capistrano Beach, provided an overview of the personal situations associated with some of the homeless individuals in San Clemente.

Brad Malamud, San Clemente, stated that the Brown Act prohibits Council from taking action on non-agendized items, but allows Council to respond to public inquiries; questioned the rationale for Council discussing the homeless shelter matter in Closed Session; opined that parties and subject matters associated with anticipated litigation need to be disclosed.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

**Update on City Projects**

Assistant City Manager Sund provided an update on various City projects.

C. **City Attorney**

None.

D. **Council Members**

(1) **Coastal Animal Services Authority (CASA)**

Mayor Swartz narrated a PowerPoint presentation concerning animals available for adoption at the San Clemente Animal Shelter. A hard copy of Mayor Swartz's presentation is on file with the City Clerk.

**Principal for a Day at San Clemente High School**

Mayor Swartz shared his experience as Principal for a Day at San Clemente High School; explained that one class suggested that public Wi-Fi locations be established; conveyed that he suggested that the students approach local businesses concerning possible partnerships for Wi-Fi locations and advised that he invited the students to attend a future Council meeting to present their project.

### **Commercial Vehicle Parking Subcommittee Report**

Councilmember Hamm reported that Councilmember Ferguson and he met concerning the City's Commercial Vehicle Parking Ordinance; conveyed that he does not recommend that Council revisit the Commercial Vehicle Parking Ordinance, but pointed out that Councilmember Ferguson has a different opinion.

Councilmember Ferguson reported that she supports Council revisiting the Commercial Vehicle Parking Ordinance due to her belief that it was intended to apply only to large fleet vehicles; requested the item be agendized for Council consideration.

Following discussion, Council directed Staff to prepare a memo to identify the history and highlights of the City's Commercial Vehicle Parking Ordinance. The memo is to include information about how other coastal cities with similar street parking issues regulate commercial vehicle parking.

### **Boy Scout Citizen Badge Interview**

Mayor Pro Tem Bane reported that he was interviewed by Hunter Corrado, a Boy Scout in the process of obtaining his citizen badge; stated that Hunter asked insightful questions regarding the toll road; advised that he invited Hunter to attend a Council meeting after he obtains his citizen badge.

### **Little League Opening Day**

Mayor Pro Tem Bane reported that he will attend the Little League Opening Day on February 23, 2019 and invited the public to attend.


## 12. **RESOLUTIONS/ORDINANCES**

### **A. Ordinance No. 1671 (Second Reading) – Enforcement of Camping Ordinances**

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to adopt 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.

13. **ADJOURNMENT**

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to adjourn at 7:32 p.m. The next Regular Council Meeting will be held on Tuesday, April 2, 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.



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MAYOR of the City of  
San Clemente, California



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CITY CLERK of the City of  
San Clemente, California