

CITY OF SAN CLEMENTE

City Council Minutes

Regular Meeting – April 16, 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 April 16, 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

*Left meeting at 9:15 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

Brad Malamud, San Clemente, opined that the performance evaluation of the City Attorney should take place in open session; suggested that the City Attorney should serve in the capacity of either City Attorney or City litigator, but not both.

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY MAYOR PRO TEM BANE, CARRIED 5-0, to recess to Closed Session at 5:04 p.m. to discuss the following:

A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Pursuant to Government Code section 54957

Title: City Attorney

B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

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

Number of Cases: 3

Case Name: MemorialCare Services, et al. v. City of San Clemente

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

Case Name: Orange County Catholic Worker v. Orange County, et al.

Case Number: SA CV 18-0155-DOC

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

BUSINESS MEETING CONVENED

The City Council Business Meeting of April 16, 2019 convened at 6:15 p.m., with all members present.

INVOCATION

Mark Boud, Senior Minister of Church of Jesus Christ of Latter Day Saints, gave the invocation.

PLEDGE OF ALLEGIANCE

Councilmember Hamm led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

A. **Toll Road Update**

Councilmember Ferguson reported that Mayor Pro Tem Bane and she represented the City at the TCA Board meeting of April 11, 2019, noting that they expressed support for AB 1273 (Brough) and also sought a response to the City of San Clemente's settlement agreement that was submitted in March 2019.

Mayor Pro Tem Bane stated that Councilmember Ferguson added items to the April 11, 2019 TCA Board meeting agenda to seek a third-party audit and to also seek implementation of a number of transparency measures; related that the measures did not pass.

B. **Donate Life Month Proclamation**

Mayor Swartz presented a proclamation to Dick Veale proclaiming April 2019 as Donate Life Month.

C. **Orange County Human Relations Report**

Francisco Marmolejo and Susan Reese, of Orange County Human Relations, reported on Orange County Human Relations activities.

D. **USA Surfing Events**

Greg Cruse, CEO of USA Surfing, narrated a PowerPoint presentation entitled "San Clemente Surfing Into Summer Olympics"; requested City sponsorship of future USA Surfing Events in San Clemente as set forth in City Policy, noting that it is not requesting financial assistance.

Council directed Staff to submit an Administrative Report for a future Council meeting concerning possible sponsorship of USA Surfing events.

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

University of California Admission Practices

Dawn Urbanek, San Clemente, voiced concern that a record number of California residents have been denied admission to University of California colleges because a higher number of out-of-state and international students are being accepted to increase revenue.

PRA Requests/Closed Session Documents/Availability of Warrant Register Information/Speaking Under Both Oral Communications Parts 1 and 2/Homeless Situation

Brad Malamud, San Clemente, requested that JustFOIA public records requests be open for public access without a code, that potential litigation items on Closed Session agendas include documentation, that Warrant Register information be included in the meeting binder in the Council Chambers, that people be allowed to speak under both Oral Communications Part 1 and Part 2, and that steps be implemented to address the homeless situation.

Marine Beach Clean-up/Barbeque and Earth Day Festival

Bill Hart, Watershed Task Force, thanked City Staff for facilitating the Marine Beach Clean-Up/Barbeque on April 3, 2019 and Earth Day Festival on April 13, 2019.

Marine Beach Clean-Up and Barbeque/Gratitude to the City's Representatives to the TCA Board

Ken Nielsen, Watershed Task Force, thanked the City for its assistance with the Beach Clean-Up/Barbeque on April 3, 2019; stated that he attended the April 11, 2019 TCA Board meeting and conveyed his appreciation to San Clemente's representatives to the TCA Board for their efforts.

Homeless Situation

Michelle Brooks, San Clemente, spoke on the need for a homeless shelter to enable Police Services to enforce laws that prohibit camping and offered to assist on a task force to address the situation.

Aimee Berberet, San Clemente, questioned why the issue of a temporary homeless shelter is not on the agenda so that the City can enforce its no-camping ordinance; spoke regarding a murder that was committed by homeless persons in Carlsbad.

Eva O'Keefe, San Clemente, stated that sometimes homelessness is a life style choice; urged people to stop enabling the homeless and requested that Council empower the Orange County Sheriffs' Department to do its job.

Marci Skinner, San Clemente, stated that she no longer feels safe with the homeless situation and stressed the need for an immediate plan.

Tim Houchen, Hope 4 Restoration, questioned when the City will announce its plans for a homeless shelter.

Sherry (last name not provided), San Clemente, voiced concern with the homeless situation, noting that Sea Summit residents have had to pay for security to keep homeless persons from utilizing their clubhouse.

- 3. MOTION BY COUNCILMEMBER HAMM, 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**

None.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to approve the Consent Calendar with the removal of Items C, F, K and O.

A. **City Council Minutes**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to approve the City Council Special Meeting minutes of April 1, 2019 and Regular Meeting minutes of April 2, 2019.

B. MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to receive and file:

(1) Design Review Subcommittee Regular Meeting minutes of February 13, 2019.

(2) Planning Commission Adjourned Regular Meeting minutes of April 3, 2019.

D. **Contract Amendment - Well Water Treatment Plant Chemical Storage Building**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to approve, and authorize the Mayor to execute, Amendment No. 1 to Contract C18-67, by and between the City of San Clemente and AKM Consulting Engineers, providing for engineering services for the Well Water Treatment Plant Chemical Storage Building, Project No. 16408. This Amendment increases the contract amount from \$97,965 to an amount not to exceed \$126,853 (a maximum increase of \$28,888).

E. **Change Order Ratification and Approval of Additional Funding -
Emergency Protection of Linda Lane Pump Station**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, 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, which 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 \$200,000 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 \$135,000 for the Emergency Protection for Linda Lane Pump Station, Project No. 16209.

G. **Declaration of Surplus and Disposition of Retired Fleet Equipment and Vehicles**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to declare the equipment and vehicles identified on Attachment #1 of the Administrative Report, dated April 16, 2019 (on file with the City Clerk), as surplus, and approve and authorize Ken Porter Auctions for the public auctioning of the subject City of San Clemente surplus equipment and vehicles.

H. **Possible Term Extensions for Commission/Committee Members Pending Conclusion of Council's Assessment as to Whether Changes are to be Made to the Structure and Composition of the City's Commissions and Committees**

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

1. Extend the terms of the twenty Commission and Committee members whose terms are due to expire on June 30, 2019 until such time as Council determines whether changes are to be made to the City's Commissions and Committees and the appointees to the newly-defined Commissions and Committees have assumed office.
2. In the event incumbents of positions that are due to expire on June 30, 2019 decline to serve an extended term, direct that the position(s) remain vacant unless the number of vacant positions on any Commission or Committee results in fewer members as are necessary for a quorum. In the event less than a quorum of a Commission/Committee is able to serve beyond June 30, 2019, direct Staff to return to Council for direction as to whether one or more positions on that particular Commission or Committee should be filled prior to conclusion of Council's assessment of the City's Commissions and Committees.

I. **Notice of Completion - Corporation Yard Buildings/Structures Painting Project**

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

1. Accept the Corporation Yard Buildings/Structures Painting, Project Nos. 16529 and 26407, from Harbor Coating and Restoration.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the Corporation Yard Buildings/Structures Painting, Project Nos. 16529 and 26407.
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, Harbor Coating and Restoration.
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. **Supplemental Appropriation - West Avenida Palizada Sidewalk Improvement Project**

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

1. Approve a transfer of \$40,000 to the General Fund from the undesignated fund balance of the Water Fund.
2. Approve a supplemental appropriation of \$40,000 in the General Fund to Account 001-416-45300-000-16345.
3. Approve a transfer of \$40,000 from Account 042-848-43420-000-24400 to Account 001-416-45300-000-16345.

L. **Designation of FY 2019-2020 Street Rehabilitation Projects Pursuant to the State Road Repair and Accountability Act of 2017 (Senate Bill 1)**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to adopt Resolution No. 19-10 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADOPTING THE LIST OF PROJECTS FOR FISCAL YEAR 2019-2020 FUNDED BY THE STATE OF CALIFORNIA SENATE BILL 1 (SB 1) ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017.

M. **Initiation of a General Plan Amendment to Amend the Roadway Classification of Camino Mira Costa and Camino Capistrano**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to approve the initiation of an amendment to the General Plan, as authorized by Municipal Code Section 17.16.020(c)(1), upon receipt of conditional approval from the Orange County Transportation Authority, to:

1. Reclassify Camino Mira Costa, between Camino de Estrella and Camino Capistrano, from a secondary arterial street to a divided collector street.
2. Reclassify Camino Capistrano, between North El Camino Real and Del Gado Road, from a secondary arterial street to a collector arterial street.

N. **Fee Waiver Request - Courtney's Sandcastle Charitable Foundation for Special Needs Resource Fair**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to waive the rental fees associated with the Courtney's Sandcastle Charitable Foundation Special Needs Resource Fair, to be held at the Vista Hermosa Sports Park on May 4, 2019, in an amount not to exceed \$720.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

C. **Warrant Register**

Brad Malamud, San Clemente, requested that Warrant Registers be placed in the public inspection binder in the Council Chambers; urged that more detail be provided on Warrant Register entries, particularly those related to legal matters and City credit card charges.

Council requested that Warrant Registers be included in future Council packets.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 4-1 (COUNCILMEMBER FERGUSON VOTING NOE), to approve the following:

Wire Transfers Nos. 2003 through 2010 and Warrant Nos. 557347 through 557492, paid on 3-29-19, in the amount of.....\$2,956,346.14

Handwrite No. 557680, Wire Transfers Nos. 2011 through 2012, and Warrant Nos. 557493 through 557679, paid on 4-5-19, in the amount of.....\$1,042,828.53

TOTAL WARRANT REGISTER.....\$3,999,174.67

Payroll Register

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

Warrant Nos. 715 through 717 and Automatic Deposit Advises 55082 through 55371, for the period 3-11-19 through 3-24-19, paid on 3-29-19, in the amount of.....\$ 464,102.64

TOTAL PAYROLL REGISTER...\$ 464,102.64

F. **Stakeholder Advisory Committee for Pier Bacteria Source Characterization Study**

Environmental Programs Supervisor Mallett reviewed the contents of the Administrative Report, dated April 16, 2019 (which is on file with the City Clerk); recommended that the Friends of San Clemente Foundation be added to the list of agencies to be contacted to invite a representative to serve on the Stakeholder Advisory Committee.

Susan Ambrose, Chair of the Coastal Advisory Committee, urged that Council endorse the formation of a Stakeholder Advisory Committee.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to:

1. Approve the formation of a Stakeholder Advisory Committee (SAC) for the Pier Bacteria Source Characterization Study.
2. Approve the list of agencies to be contacted to invite a representative to serve on the SAC as set forth in the Administrative Report, dated April 16, 2019 (which is on file with the City Clerk), with the addition of the Friends of San Clemente Foundation.

K. **Proposed Parking Prohibition on Camino de Estrella**

Public Works Director Bonigut responded to Council inquiries.

MOTION BY MAYOR PRO TEM BANE, SECOND BY MAYOR SWARTZ, CARRIED 4-1 (COUNCILMEMBER FERGUSON VOTING NOE), to:

1. Prohibit parking on the northwest side of Camino de Estrella from Avenida Las Palmas to Interstate 5.
2. Adopt Resolution No. 19-09 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MASTER TRAFFIC RESOLUTION NO. 1846, ESTABLISHING 'NO PARKING AREAS' ON CAMINO DE ESTRELLA.

O. **Letter Requesting Federal Funding Support for Beach Sand Replenishment**

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to approve, and authorize the Mayor to execute, letters to the City's congressional representatives to request Federal funding support for the Corps of Engineers' San Clemente beach sand replenishment project, with the direction that copies of the "Economic Analysis of Beach Spending and the Recreational Benefits of Beaches in the City of San Clemente", which was prepared by Philip G. King, are to be included with the letters and that the letters include a link to the Around Town video that the City produced a few years ago concerning the City's sand replenishment program.

7. **PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **2018 Downtown Parking Study**

Report from the Community Development Director concerning the results of the 2018 Downtown Parking Study and seeking Council direction on recommendations to improve downtown parking supply and management.

Associate Planner II Wright narrated a PowerPoint presentation entitled "2018 Downtown Parking Study", dated April 16, 2019 (which is on file with the City Clerk), and responded to Council inquiries.

Mikii Rathmann, Downtown Business Association, spoke in support of implementing the parking recommendations as proposed by Staff; urged that Council provide flexibility in terms of the hours that shared parking lease agreements are in effect; voiced concern that cars are being parked all day on Lot 8-A on Avenida Cabrillo for ride-share purposes, which reduces the availability of short-term parking available to others; spoke in support of wayfinding signage to inform persons of parking available on outlying

streets; recommended improved lighting so that employees who work at night feel more secure parking in ancillary areas.

Don Brown, Planning Commission, stated that six parking studies have been conducted in the last 20 years and asserted that it is time to implement parking improvements.

Wayne Eggleston, San Clemente, stated that 30 restaurants exist in the downtown area and voiced concern that an imbalance may be taking place with regard to the mix of restaurants, retail, residences and offices; voiced concern that business owners and employees park on Del Mar; recommended that parking enforcement be enhanced, perhaps through use of a professional parking company; stated that the owner of the large parking lot behind 209 Del Mar is willing to lease his lot for public parking after 5:00 p.m.; spoke in opposition to extending the two-hour parking limits on Del Mar to three hours and also opposed the installation of parking meters.

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

1. Accept the 2018 Downtown Parking Study.
2. Accept the recommendations contained in Attachment 2 of the Administrative Report, dated April 16, 2019 (which is on file with the City Clerk), with the following additions/clarification:
 - Direct the Downtown Parking Action Team (DPAC) to coordinate with the DBA and Chamber of Commerce before the parking recommendations are agendaized for Council consideration in six months.
 - Under the category of "Parking Regulation Changes", add that Staff is to evaluate the possibility of establishing an in-lieu parking program and provide recommendations on the best use of revenue from the in-lieu parking program.
 - Direct Staff to investigate the possibility of utilizing private parking enforcement resources.
 - The below recommendation was clarified to mean that it relates exclusively to parking design standards, and not to any changes to development standards:

"20. Reevaluate and propose changes to parking design standards, as practical, to give more flexibility for developing narrow lots according to General Plan goals and Design Guidelines. For example, revisions could include compact parking and back-in spaces, which require a narrower drive aisle."

- Direct Staff to return to Council in six months with information relating to parking strategies that can be implemented at the present time as well as strategies to be included in a longer-range plan.

B. 2018 North Beach Parking Study

Report from the Community Development Director concerning the results of the 2018 North Beach Parking Study and seeking Council direction on recommendations to improve North Beach parking supply and management.

Associate Planner II Wright narrated a PowerPoint presentation entitled "North Beach Parking Study", dated April 16, 2019 (which is on file with the City Clerk), and responded to Council inquiries.

Brad Malamud, San Clemente, opined that a parking problem does not exist in North Beach and urged that Council accept the North Beach Parking Study, but not approve the 16 recommendations contained in the Administrative Report; urged that Council allocate 10% of its parking revenue to fund parking in the downtown.

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

1. Accept the 2018 North Beach Parking Study.
2. Accept the recommendations contained in Attachment 2 of the Administrative Report, dated April 16, 2019 (which is on file with the City Clerk) with the following modifications:
 - The below recommendation was moved from Recommendation #15 to Recommendation #2:

"Establish Residential Parking Benefit District to prevent 'spillover' into the neighborhood south of Boca de la Playa by offering inexpensive permits to residents and metering the streets to guarantee equal access to visitors."

Action continued on next page

- A new Recommendation (#17) was added to read as follows:

"Direct Staff to investigate the possibility of establishing an in-lieu parking program."

MEETING RECESSED

Council recessed at 8:45 p.m. and reconvened at 8:55 p.m., with all members present.

C. **Update on the Evaluation of Orange County Sheriff's Department Contract Law Enforcement Services Study**

Report from the Assistant City Manager concerning the results of the study of Orange County Sheriff's Department Contract Law Enforcement Services.

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

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to receive and file the Analysis of Contract Law Enforcement Services Costs and Methodology for Contract Cities study prepared by Matrix Consulting Group.

D. **Consideration of Assembly Bill 1273 (Brough) - Joint Exercise of Powers Agreements: Toll Roads**

Report from the City Manager concerning the possibility of supporting AB 1273 (Brough) and authorizing the Mayor to execute, and Staff to submit, a letter of support.

Management Analyst Johnston reviewed the contents of the Administrative Report.

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

1. Support Assembly Bill 1273 (Brough) - Joint Powers Agreements: Toll Roads.
2. Authorize the Mayor to execute, and Staff to submit, a letter of support.

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

**Councilmember Ferguson left the meeting at 9:15 p.m.*

Homeless Concerns

Frances Carson, member of the Board of Directors for Sea Summit, voiced concern that the homeowner fees for Sea Summit residents have increased due to the need for enhanced security to prevent homeless persons from utilizing Sea Summit's facilities.

Ken Orr, San Clemente, opined that the homeless situation is worsening and is jeopardizing public safety.

Susan Smith, San Clemente, cited her personal experiences with homeless persons and opined that safety is being compromised.

Cabrillo Parking Lot

Christian Collao, San Clemente, stated that many residents of Hotel San Clemente utilize the 24-hour Cabrillo parking lot to park their vehicles; urged that Hotel San Clemente residents be issued permits to allow them to continue to park at the Cabrillo parking lot if the lot is changed from a 24-hour lot.

Councilmember Comments on KFI Radio

Tony Rubolino, San Clemente, requested that Councilmember Ward apologize for her comments on KFI Radio concerning Police Services.

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

None.

B. **City Manager**

City Manager Makshanoff provided an update on various City projects.

C. **City Attorney**

None.

D. Council Members

(1) Animal Report - Coastal Animal Services Authority (CASA)

Mayor Swartz presented photographs of pets available for adoption at the San Clemente Animal Shelter.

Request to Consider Policy Concerning Oral Communications/SB 584 (Overhead Power Lines)

Councilmember Hamm requested a clarification of the rules concerning Oral Communications at Council meetings; suggested that Council take a position of support for SB 584 (Moorlach, Electricity: undergrounding of electrical wires).

Request to Consider Policy Concerning Oral Communications/ Recommendation that Organizations Support AB 1273 (Brough)

Mayor Pro Tem Bane opined that the rules relating to Oral Communications at Council meetings should be clarified; recommended that organizations, including the Surfrider Foundation, support AB 1273 (Brough).

12. RESOLUTIONS/ORDINANCES

None.

13. ADJOURNMENT

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0 (COUNCILMEMBER FERGUSON ABSENT), to adjourn at 9:37 p.m.

The next Regular Council Meeting will be held on May 7, 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 PRO TEM of the City of San Clemente, California

CITY CLERK of the City of San Clemente, California