

CITY OF SAN CLEMENTE

City Council Minutes

Regular City Council Meeting - October 1, 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 October 1, 2019 at 5:05 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Pro Tem Bane.

PRESENT FERGUSON, HAMM, WARD, MAYOR PRO TEM BANE

ABSENT NONE

STAFF PRESENT James Makshanoff, City Manager; Scott Smith, City Attorney (Cristina Talley served as Council's Legal Counsel during Agenda Items 7-A and 7-B); Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk.

Settlement Announcement - Malamud, et al. v. City of San Clemente, et al. (Case Number: USDC 8:19-CV-00855)

City Attorney Smith announced that during Closed Session on September 18, 2019, Council approved a settlement in the case entitled Malamud, et al. v. City of San Clemente, et al.; advised that the settlement was approved by a 2-1 vote with Councilmember Hamm opposed and Councilmember Ferguson absent.

CLOSED SESSION

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 4-0, to recess to Closed Session at 5:06 p.m., 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: 4

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

Closed Session items continued on next page

Case Name: Housing is a Human Right Orange County, et al v. County of Orange, et al.

Case Number: USDC 8:19-CV-00388 DOC-KES

Case Name: Emergency Shelter Coalition v. City of San Clemente

Case Number: 30-2019-01080355-CU-WM-CXC

Case Name: San Clemente Coastal Access Alliance, et al. v. City of San Clemente, et al.

Case Number: 30-2018-01034124-CU-WM-CJC

B. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code Section 54956.8

Property: 654 Camino de los Mares (San Clemente hospital)

Agency Negotiator: City Manager, Assistant City Manager, City Attorney, and Steven Rousso

Negotiating Parties: City of San Clemente and Memorial Health Services and Saddleback Memorial Medical Center and/or their authorized agent(s)

Under Negotiation: Interim or Long Term Acquisition or Lease

BUSINESS MEETING CONVENED

The City Council Business Meeting of October 1, 2019 convened at 6:09 p.m., with all members present.

INVOCATION

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

PLEDGE OF ALLEGIANCE

Councilmember Hamm led the Pledge of Allegiance.

1. SPECIAL PRESENTATIONS

A. Toll Road Update

Mayor Pro Tem Bane reported that the TCA Board did not meet last month; advised the next TCA Board meeting will take place on October 10, 2019; stated that hearing dates relating to the toll road litigation are scheduled to take place in December 2019.

B. Update on Homeless Issue

City Manager Makshanoff reported that Jones Day, the City's legal counsel with regard to homeless issues, filed an amicus brief on behalf of the City to challenge the City of Boise v. Robert Martin decision and ask that the Supreme Court hear the case; stated that the City also filed a Request for Dismissal of its other homeless lawsuits.

Rick Loeffler, San Clemente, requested more information about the possibility of the California Coastal Commission fining the City over the Pico campground; suggested that Park Rangers should obtain certification to enforce City Codes; asserted that conditions at Pico Park are worsening.

Ken Orr, San Clemente, asserted that the City may be fined by the California Coastal Commission for the Pico campground; commented that citizens cannot use Pico Park safely because of transients; suggested that the camp be closed.

Vonne Barnes, Board President of the Rancho San Clemente Master Association, narrated a PowerPoint presentation, which is on file with the City Clerk; spoke in opposition to a Specific Plan Amendment that would allow transient camp sites in Rancho San Clemente.

Susan Smith, San Clemente, opined that the Pico campsite is located in an inappropriate location due to its proximity to residences, the coast, and protected sensitive habitat; urged that the camp be relocated to an appropriate site outside the coastal zone.

Brad Malamud, San Clemente, opined that the filing of an amicus brief by Jones Day represents a waste of \$10,000.

In response to Council request, City Attorney Smith reported that the California Coastal Commission has not sent the City a letter, imposed a fine, or conducted a hearing on the Pico campsite; noted that the possibility of Coastal Commission objection to the camp was raised solely by a member of the Commission staff in response to public comment, adding that the Coastal Commission has since informed the City that no enforcement action will be taken with regard to the campsite.

C. **Presentation of Commendation – Samantha Sibley**

Mayor Pro Tem Bane presented a City Commendation, and Assemblyman Brough presented a Commendation from the California State Assembly, to Samantha Sibley in recognition of winning the world-class Super Girl Surf Pro, the largest women's surf competition in the world.

D. **Presentation of Proclamation – Fire Prevention Week**

Mayor Pro Tem Bane presented a Proclamation to Mike Petro, Battalion Chief, Orange County Fire Authority, declaring October 6-12, 2019 as Fire Prevention Week.

E. **Presentation of Proclamation - Code Enforcement Officer Awareness Week**

Mayor Pro Tem Bane presented a Proclamation to Adam Atamian, Code Enforcement Manager, setting apart October 6-12, 2019 as Code Enforcement Officer Awareness Week.

F. **Presentation of Proclamation – Red Ribbon Week**

Mayor Pro Tem Bane presented a Proclamation to the San Clemente Junior Women's Club, designating October 23-31, 2019 as Red Ribbon Week.

G. **2019 Wall of Recognition Honoree – Lori Donchak**

Selection and recognition of Lori Donchak as the 2019 inductee to the Wall of Recognition.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0, to approve the selection of Lori Donchak as the 2019 designee to the Wall of Recognition.

Mayor Pro Tem Bane presented Lori Donchak with a Certificate of Recognition.

Gary Headrick, San Clemente Green, expressed gratitude to Lori Donchak for her community service, especially with regard to the San Onofre Nuclear Generating Station (SONGS).

Jackson Hinkle, San Clemente Green, recognized Lori Donchak for her stellar advocacy of public safety with regard to SONGS.

2. ORAL COMMUNICATIONS (PART 1)

City Website Content/Pico Park

Dee Coleman, San Clemente, urged that the City website provide updates on issues of significance, such as the timeline for repair of the February landslide that affected Pacific Coast Highway; spoke in support of proactive security measures for Pico Park.

San Onofre Nuclear Generating Station (SONGS)

Gary Headrick, San Clemente Green, urged that Council adopt a resolution requiring enhanced safety measures with regard to nuclear waste at SONGS.

Torgen Johnson, Solana Beach, spoke in support of safe handling of nuclear waste at SONGS; opined that the Nuclear Regulatory Commission is not doing its job and encouraged Council to agendize the issue to inform the public of SONGS-related risks.

Layse, Enzo and Coco Johnson explained their concerns with the potential for a nuclear accident at SONGS.

Cathy Iwane, Samuel Lawrence Foundation, stated that Southern California Edison is storing 3.6 million pounds of highly radioactive waste 100 feet from the beach; voiced concern with the hazards associated with storing waste at the current location, adding that the risk is compounded because the waste is being stored in thin-walled canisters that are scratched and gouged.

Roger Johnson, San Clemente, voiced concern with the risks associated with the storage of nuclear waste.

Gene James - Council Candidate

Louise Herbert distributed a communication, which is on file with the City Clerk, which alleged that Gene James is affiliated with Jim Bieber, who she asserted is a toll road consultant.

Property Sale in Rancho San Clemente Business Park for Regional Homeless Shelter

Gene James, San Clemente, stated that he opposes the toll road and supports auditing and abolishing the TCA; stated that a ballot is being sent to owners of property within the Rancho San Clemente Business Park to change rules to enable the sale of a parcel to Ed Connor for use as a regional homeless shelter and possible permanent supportive housing.

Glenn Walker, San Clemente, conveyed concern with the possibility that the Emergency Shelter Coalition will construct a large shelter and permanent supportive housing in Rancho San Clemente; urged City intervention.

Homeless Situation - Fire Potential

Lyndie O'Toole, San Clemente, stated that homeless persons have started two fires in Rancho San Clemente within the last two months; urged that fire prevention measures be implemented to protect public safety, property, and wild life.

University of California Admissions Policies/Finances

Dawn Urbanek, San Clemente, distributed and reviewed a communication entitled "There needs to be a Federal Criminal Investigation into the Admissions Policies and Finances of the Office of the President of the University of California". A hard copy of Ms. Urbanek's presentation is on file with the City Clerk.

- 3. MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, 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 MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to approve the Consent Calendar, with the removal of Items 6B(1), 6B(7), C and I.

- A. **City Council Minutes**

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

- (1) Receive and file the City Council Regular Meeting Minutes of September 17, 2019.

- (2) Approve the City Council Adjourned Regular Meeting Minutes of September 18, 2019.

B. MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to receive and file:

- (2) Coastal Advisory Committee Regular Meeting Minutes of July 11, 2019.
- (3) Design Review Subcommittee Regular Meeting Minutes of August 28, 2019.
- (4) Planning Commission Adjourned Regular Study Session Minutes of September 4, 2019.
- (5) Planning Commission Regular Meeting Minutes of September 4, 2019.
- (6) Zoning Administrator Regular Meeting Minutes of September 19, 2019.

D. **Release of Performance and Labor and Material Bonds Related to the Marblehead Coastal Development Via Socorro Street Improvements, CalTrans Grading, and Joint Regional Water Supply System (JRWSS) Waterline Grading Improvements for Tract 8817**

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to adopt Resolution No. 19-31 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE RELEASE OF PERFORMANCE AND LABOR & MATERIAL BONDS RELATED TO THE MARBLEHEAD COASTAL DEVELOPMENT VIA SOCORRO STREET IMPROVEMENTS, CAL TRANS GRADING, AND JRWSS WATERLINE GRADING IN TRACT 8817.

E. **Designation of City-Authorized Representative to Obtain FEMA and Cal OES Grant Programs for Winter Disaster Damage**

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to adopt Resolution No. 19-32 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DESIGNATING THE CITY MANAGER, PUBLIC WORKS DIRECTOR/CITY ENGINEER AND/OR UTILITIES DIRECTOR AS THE CITY'S AUTHORIZED REPRESENTATIVE(S) TO OBTAIN FEDERAL AND STATE FINANCIAL ASSISTANCE.

F. **Shared Services Agreement – Municipal Water District of Orange County (MWDOC) for America’s Water Infrastructure Act (AWIA)**

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

1. Approve, and authorize the City Manager to execute, Contract C19-68, an agreement by and between the City of San Clemente and MWDOC, providing for shared consultant costs for the 2019 AWIA Compliance Risk and Resiliency Assessments and Emergency Response Plans for Participating Agencies (Phases II and III), in an amount not to exceed \$145,405.
2. Approve an appropriation of funds in the amount of \$83,662 from the Water Fund Depreciation Reserve to Account 052-461-43695-000-30809 for Phase II, Risk and Resilience Assessment.

G. **Notice of Completion - Prima Deshecha Canada Channel (Flood Control Facility No. M01)/Avenida Vaquero Culvert Rehabilitation**

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

1. Accept the Prima Deshecha Canada Channel (Facility No. M01)/ Avenida Vaquero Culvert Rehabilitation, Project No. 15006, from the contractor, Howard Ridley Co. Inc.
2. Authorize the Mayor Pro Tem to execute, and the City Clerk to record, the Notice of Completion for the Prima Deshecha Canada Channel (Facility No. M01)/Avenida Vaquero Culvert Rehabilitation.
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 Howard Ridley Co. 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.

H. **Communications Site Lease Agreement – Salvador Communications Site (Reservoir #5, Calle Nina)**

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

1. Approve, and authorize the Mayor Pro Tem to execute, Contract C19-69, a Communications Site Lease Agreement by and between the City of San Clemente and U.S. Customs and Border Protection Agency, for the property located at the Salvador Communications Site (Reservoir #5, Calle Nina).
2. Authorize the City Manager to execute future extensions of this agreement, as specified in the lease, provided the lease rate is not reduced.

J. **Records Destruction - Emails**

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to adopt Resolution No. 19-33 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE DESTRUCTION OF EMAILS PURSUANT TO GOVERNMENT CODE SECTION 34090.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

6B(1). **Coastal Advisory Committee Regular Meeting Minutes of June 13, 2019**

Gary Headrick, San Clemente Green, suggested that the Coastal Advisory Committee should become involved in the issue of nuclear waste.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0, to receive and file the Coastal Advisory Committee Regular Meeting minutes of June 13, 2019.

6B(7). **Human Affairs Committee Regular Meeting Minutes of August 13, 2019**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to receive and file the Human Affairs Committee Regular Meeting minutes of August 13, 2019, with the direction that Staff review with the Human Affairs Committee, the portion of the General Plan relating to human affairs, the scope of Human Affairs Committee responsibilities, and the means by which the Council is to be kept informed.

C. **Warrant Register**

Brad Malamud, San Clemente, opined that entries on the Warrant Register should be more detailed; recommended that BBK bills be paid only if invoices are provided to the City by the 20th of each month as specified in the City's retainer agreement with BBK; requested that the public be provided access to BBK's monthly work-in-progress reports if not attorney-client privileged.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to approve the below Warrant and Payroll Registers, and to request that the City Attorney's monthly work-in-progress reports be submitted to Council, but not made publicly available since they are protected by attorney-client privilege.

Wire Transfers Nos. 2101
through 2106 and Warrant Nos.
561516 through 561671, paid on
9-13-19, in the amount of.....\$ 891,419.38

Wire Transfers Nos. 2107
through 2108 and Warrant Nos.
561672 through 561834, paid on
9-20-19, in the amount of.....\$ 4,163,429.08

TOTAL WARRANT REGISTER.....\$ 5,054,848.46

Payroll Register

Warrant Nos. 749 through
752 and Automatic Deposit Advises
58909 through 59212, for the period
8-26-19 through 9-8-19, paid on
9-13-19, in the amount of.....\$ 489,894.87

TOTAL PAYROLL REGISTER.....\$ 489,894.87

I. **Preparation of Request for Qualifications and Proposals for Re-Opening and Operation of San Clemente Hospital**

Dee Coleman, San Clemente, opined that an appraisal is needed, prior to issuance of an RFP, to determine whether the City can afford to pursue a hospital.

Brad Malamud, San Clemente, questioned why an RFP is needed since the City has indicated that it already has a hospital operator; questioned how the City could fund a hospital.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 3-1 (COUNCILMEMBER FERGUSON VOTING NOE), to authorize the City's Consultant, Steve Rousso, to prepare a draft Request for Proposal for presentation to the City Council for consideration at its November 5, 2019 meeting.

REORDERING OF AGENDA

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0, to consider Agenda Item 7-B prior to Agenda Item 7-A.

7. **PUBLIC HEARINGS**

A. **Appeal of Conditional Use Permit 18-534, AT&T Small Cell (MSVJO 014) in Public Right-of-Way at 3018 Camino Vera Cruz CS**

Continued Public Hearing to consider an appeal of Conditional Use Permit 18-534, AT&T Small Cell (MSVJO 014), in the public right-of-way at 3018 Camino Vera Cruz CS.

(Note: This agenda item was actually considered after Public Hearing Item 7-B, which related to an AT&T Small Cell at 1101 Calle Del Cerro.)

Mayor Pro Tem Bane announced that he would recuse himself from participation in this item due to his financial interest associated with his representation of The Reserve in litigation against the TCA; left the Chambers at 9:40 p.m.

Councilmember Hamm assumed the duties of the Mayor.

Attorney Cristina Talley served as Council's legal counsel during this item because City Attorney Smith and his firm assisted Staff in developing recommendations for the subject entitlement application.

Associate Planner Crockett reviewed the contents of the Administrative Report and responded to Council inquiries.

Councilmember Hamm suggested the possibility of locating the proposed small cell at the southwest corner of Colina Rodante and Camino Vera Cruz; noted that in order to consider relocating the proposed cell to Colina Rodante, it would be necessary to send notices to all property owners within 300' of that location; pointed out that the Applicant is amenable to considering the proposed alternate location and that Staff believes that a cell site at the Colina Rodante location would be feasible.

Councilmember Hamm opened the Public Hearing.

Kristin Fuller, San Clemente, opined that the City should have provided notice of this Public Hearing to residents outside the 300' radius of the proposed cell location to ensure that all affected persons are aware of the proposal; suggested that the proposed small cell would negatively affect property values and would be obtrusive, unsightly, and potentially dangerous; spoke in support of an Ordinance to regulate small cells.

Laura Fischer, San Clemente, narrated a PowerPoint presentation, which is on file with the City Clerk, entitled "No Cell Tower in the Middle of Our Community"; cited concern with the aesthetics of the proposed small cell and its negative impact on views; stated that over 370 signatures have been obtained to date in opposition to locating small cells near homes and schools. *(Note: Ms. Fischer did not turn the petition into the City at this time.)*

Mark Delancellotti, San Clemente, conveyed his experience with environmentally-linked Non-Hodkins Lymphoma; urged that Council not make a decision that could negatively affect the health of San Clemente residents.

Julie Moran, San Clemente, spoke on the negative impact of unsightly facilities on property values; noted that other cities have adopted Ordinances to regulate cell equipment.

Ann-Marie Hines, San Clemente, spoke in opposition to the proposed small cell due to unseen RF fields, aesthetics, and impact on property values; urged that an independent study be conducted to assess the safety of 5G technology.

Dr. John Chang, San Clemente, expressed concern that the proposed small cell could reduce property values by 10-20%; stated that the small cell under consideration will obstruct his ocean view.

Jaime Bargiel, San Clemente, narrated a PowerPoint presentation, which is on file with the City Clerk, that demonstrated the impact that the proposed small cell will have on the view from her home; objected to the small cell due to her concerns with its appearance as well as impacts on property values, views, and health; suggested that many viable alternate locations for the small cell exist.

Tyler Bargiel, San Clemente, stated that the existence of cell equipment makes it more difficult to obtain property financing; stated that he will file a lawsuit if the small cell is approved.

Matthew Huefner, San Clemente, narrated a PowerPoint presentation entitled "Wireless Worries", which is on file with the City Clerk; urged Council to reject the appeal; voiced concern with unknown health risks.

James Nelson, San Clemente, objected to locating the proposed small cell at the southwest corner of Colina Rodante/Camino Vera Cruz because that site is located within 100' of his home; asserted that relocating the small cell to the Colina Rodante location would generate as much concern and threats of litigation as the current proposed location.

Kortney Morrow, San Clemente, stated that AT&T could install 4G antennas farther away from the proposed site because 4G covers a larger range; suggested that AT&T intends to convert the proposed 4G installation to 5G technology in the future.

Franklin Orozco, Zoning Manager with Interlink Planning Group, speaking on behalf of AT&T, stated that the proposed small cell is a 4G installation which produces non-ionizing transmissions; stated the proposed small cell will meet FCC guidelines; opined the visual change that the proposed small cell will have on the existing light pole is minimal; stated that the alternative to small cells is larger towers with multiple antennas; responded to Council inquiries.

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

During the ensuing discussion, Council expressed an interest in continuing this item to allow for the receipt of additional data to justify the need for the proposed small cell and to consider possible alternative small cell locations.

In response to Council inquiry, Mr. Orozco agreed to extend the tolling agreement and expressed receptiveness to possibly situating the proposed small cell at a different location.

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 2-1-1 (COUNCILMEMBER HAMM VOTING NOE AND MAYOR PRO TEM BANE RECUSED), to continue CUP 18-534 to the Council meeting of November 19, 2019, to enable Councilmember Ward to work with the Applicant concerning 1) the justification for the proposed small cell, 2) the possibility of relocating the small cell to an alternate site, and 3) other issues raised this evening.

MEETING RECESSED

Council recessed at 10:40 p.m. and reconvened at 10:50 p.m., with all members present.

B. Appeal of Conditional Use Permit 18-535, AT&T Small Cell (MSVJO 016) in Public Right-of-Way at 1101 Calle Del Cerro CS

Continued Public Hearing to consider an appeal of Conditional Use Permit 18-535, AT&T Small Cell (MSVJO 016), in the public right-of-way at 1101 Calle Del Cerro CS.

Associate Planner Crockett narrated a PowerPoint presentation entitled "AT&T Small Cell Site ID: MSVJO_016 Alternative Sites Analysis" and responded to Council inquiries. A hard copy of Ms. Crockett's presentation is on file with the City Clerk.

Attorney Cristina Talley served as Council's legal counsel during this item because City Attorney Smith and his firm assisted Staff in developing recommendations for the subject entitlement application.

Attorney Talley reported on limitations that the FCC imposes on the ability of cities to regulate cell facilities, noting that Council can impose reasonable regulations on locations and may also consider aesthetics, provided that doing so does not effectively prohibit cells from being installed in the right-of-way; explained the City cannot impose regulations that would have the effect of precluding cell facilities all together and also cannot consider health impacts associated with radiofrequency (RF) exposure; explained that each application must be considered case-by-case based on the circumstances that exist at the time of consideration.

Mayor Pro Tem Bane opened the Public Hearing.

Franklin Orozco, Zoning Manager with Interlink Planning Group, speaking on behalf of AT&T, explained that AT&T plans to construct 19 small cells in San Clemente -- five of which have already been approved; reviewed the

appearance of the small cells, noting that they are designed to minimize visual impacts; asserted that the location of the proposed small cell is buffered from residential areas and fulfills the need for cell coverage; requested Council approval and concurred with the proposed conditions of approval; responded to Council inquiries.

Councilmember Ward reported that she had ex parte communication with an AT&T agent, during which the agent indicated that AT&T would be willing to pay for an RF emissions analysis by an independent firm that would be selected and retained by the City. Mr. Orozco agreed to the inclusion of a condition of approval to this effect.

Councilmember Hamm reported that he communicated with AT&T and staff concerning relocating the small cell to an alternate location; noted that the Public Hearing will need to be re-noticed if Council wishes to consider an alternative small cell location if properties are located within a 300' radius of the newly-proposed location that were not noticed for this meeting.

Kristy Neuhausen, San Clemente, distributed a petition and narrated a PowerPoint presentation (both of which are on file with the City Clerk); described radiation levels associated with 4G and 5G technologies; cited health concerns associated with high radio frequencies; voiced concern with the aesthetics of the proposed small cell and the potential that the small cell will be converted to 5G technology in the future.

Casey Harper, San Clemente, narrated a PowerPoint, which is on file with the City Clerk; asserted that cell towers in other locations have caused cancer and killed brain cells; urged Council to adopt an ordinance to prohibit small cells from being located within 1,000 feet of residences, schools, and parks.

Tiffany Johansson, San Clemente, voiced concern with the health effects of small cells, noting that ramifications from long-term exposure have not been studied; asserted that the proposed small cell will reduce home values and set a precedent for other service providers to also apply for small cells.

Laura Fischer, San Clemente, commented that cell installations can reduce property values by up to 20% and make properties harder to sell; objected to the proposed small cell due to concerns with health effects from RF exposure, degradation of views, and the possibility of setting a precedent; reviewed a PowerPoint, which is on file with the City Clerk, that identifies actions taken by other cities with regard to cell facilities.

Sandy Meisel, San Clemente, urged Council to uphold the Planning Commission's denial of the proposed small cell; stated that the cell site is located in close proximity to a park and homes; related concerns that the small cell will significantly diminish property values.

Julie Moran, San Clemente, stated that location is the main determinant of real estate value; described the negative impact that the proposed small cell will have on property values and area aesthetics.

Jackson Hinkle, San Clemente, stated that San Clemente citizens are already at risk due to their close proximity to SONGS and associated potential radioactive releases; voiced concern that citizens are now proposed to be exposed to radio frequencies from small cells.

Kortney Morrow, San Clemente, asserted the Applicant provided simulations and measurements that are deceptive; voiced concern with the negative impact that the small cell will have on the surrounding area. Hard copies of Ms. Morrow's photographs are on file with the City Clerk.

Andrew Morrow, San Clemente, cited health concerns associated with RF radiation.

Bert Levesque, President of the Harbor View Homeowners Association, stated that homeowners worked hard to have the antennas and satellites behind their neighborhood removed, but pointed out that the tower remains; questioned what will happen to the small cells when they become outdated.

Will King, San Clemente, urged Council to consider the potential adverse health risks of the proposed small cell; asserted that the small cell is inconsistent with the community's image and will lower home values, diminish the area's charm, and pose a fire risk.

Kristina Krich, San Clemente, spoke in support of a strong ordinance to regulate cell facilities; stated that small cells endanger health, adding that wireless companies do not carry insurance to protect them from lawsuits associated with health effects.

Glenn Anderson, San Clemente, spoke in opposition to the proposed small cell and suggested that the City should adopt an Ordinance to regulate cell facilities.

Gary Headrick, San Clemente, recommended that the City adopt an Ordinance to prohibit cell equipment within 1,000 feet of various land uses.

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

MEETING RECESSED

Council recessed at 8:45 p.m. and reconvened at 8:59 p.m., with all members present.

During the ensuing discussion, Mr. Orozco responded to questions posed by Council as follows:

1. In order to convert to 5G technology, it would be necessary for AT&T to add antennas to the pole, which could not be accomplished without City approval.
2. If complaints are received, AT&T would be amenable to RF testing to ensure that FCC standards are being met.

RECESS TO CLOSED SESSION

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to recess to Closed Session at 9:08 p.m. due to significant exposure to litigation based on testimony presented during the Public Hearing on CUP 18-535, pursuant to Government Code §54956.9 (d)(2): A point was reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there was a significant exposure to litigation against the local agency.

MEETING RECONVENED

Council reconvened at 9:30 p.m., with all members present.

Council expressed an interest in continuing this agenda item to enable Mayor Pro Tem Bane to work with the Applicant to determine whether the need for the proposed small cell is justified and to enable alternative small cell locations to be considered.

In response to Council inquiry, Mr. Orozco agreed to enter into a tolling agreement to allow this item to be continued to the Council meeting of November 19, 2019.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to continue CUP 18-535 to the Council meeting of November 19, 2019, with direction to Staff that owners of property farther east along Avenida Del Cerro be provided notice of the November 19, 2019 Council meeting on this issue.

C. Zoning Amendment 17-043 – Regulation of Smoke or Tobacco Shops

Public Hearing to consider a City-initiated zoning amendment to San Clemente Municipal Code 17, the Zoning Ordinance, regulating smoke or tobacco shops.

City Planner Perez reviewed the contents of the Administrative Report and displayed buffer maps which identified possible distance requirements for the placement of smoke and tobacco shops from sensitive uses and other existing smoke and tobacco shops; responded to Council inquiries. Copies of Mr. Perez's buffer maps are on file with the City Clerk.

Mayor Pro Tem Bane opened the Public Hearing.

Andrea Portenier, Health Educator with the Orange County Health Care Agency, reviewed morbidity statistics associated with tobacco use, adding that problems are also being experienced with regard to e-cigarettes; provided a document entitled "San Clemente Tobacco Store Density", which is on file with the City Clerk.

Brad Malamud, San Clemente, opined that it is appropriate to regulate the distance between tobacco shops and schools, but not to regulate the distance between one business and another.

Jinhy Yoon, San Clemente, asserted that the proposed buffer will confine smoke shops to The Outlets near Sea Summit, which is already impacted by the homeless situation.

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

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 3-1 (COUNCILMEMBER FERGUSON VOTING NOE), to:

1. Find and determine that the ordinance is exempt from the requirements of the CEQA pursuant to CEQA Guidelines Sections 15060(c)(2 and 3).
2. Approve a 500-foot distance requirement for smoke and tobacco shops from sensitive uses and other existing smoke and tobacco shops.
3. Introduce Ordinance No. 1681 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE APPROVING ZONING AMENDMENT 17-043, AMENDING MUNICIPAL CODE TITLE 17 (ZONING), CHAPTERS 17.28 (SPECIAL USES), 17.36 (COMMERCIAL ZONES AND STANDARDS), 17.40 (MIXED-USE ZONES AND STANDARDS), AND 17.88 (DEFINITIONS), TO REGULATE SMOKE OR

TOBACCO SHOPS, with the incorporation of a 500-foot distance requirement for smoke and tobacco shops from sensitive uses and other existing smoke and tobacco shops.

4. Direct Staff to prepare a report for a future Council meeting that addresses the possibility of banning flavored vapes.

D. Expenditure of Community Development Block Grant Funds (CDBG) – Consolidated Annual Performance Evaluation Report (CAPER) for 2018-19

Public Hearing to consider the CDBG Consolidated Annual Performance Evaluation Report (CAPER) for 2018-19.

City Planner Perez narrated the contents of the Administrative Report.

Mayor Pro Tem Bane opened and closed the Public Hearing, there being no one desiring to speak to this issue.

MOTION BY COUNCILMEMBER FERGUSON, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to approve and adopt the 2018-19 Consolidated Annual Performance Evaluation Report (CAPER) for submittal to the U.S. Department of Housing and Urban Development.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

None.

DETERMINATION AS TO WHETHER TO CONTINUE THE CITY COUNCIL MEETING PAST 11:00 P.M.

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to consider Oral Communications Part 2 and then adjourn the meeting due to the lateness of the hour.

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

Homeless Issue

Susan Smith, San Clemente, stated that rumors are circulating that San Clemente violated the Coastal Act by situating the homeless camp in its current location; urged that the Pico encampment be relocated to the former City Hall.

Jinhy Yoon, San Clemente, stated that homeless persons who were not allowed to remain at the Pico campground because they did not have ties to San Clemente are now congregating at Pico Park and the Sea Summit trails; voiced concern that the current situation causes her to feel unsafe in her neighborhood; urged that the camp be relocated and made available to persons without ties to San Clemente so that the City can enforce its anti-camping laws.

Ken Orr, San Clemente, stated that he didn't receive advance notice of the proposal to establish a homeless encampment on Pico, even though he resides across the street from the camp; urged Council to close the camp to avoid lawsuits.

Standing Committee on Homelessness

Dee Coleman, San Clemente, concurred with the formation of a standing committee on homelessness to help expedite a solution to the homeless situation.

Gene James - Council Candidate

Bob Baker, San Clemente, addressed Gene James' candidacy for Council by displaying emails sent by Gene James (which are on file with the City Clerk) and citing finance-related matters that he obtained on line.

Jackson Hinkle - Council Candidate

Tony Rubolino, San Clemente, narrated a PowerPoint entitled "Jackson Hinkle Fire Ops Debacle Continues", which is on file with the City Clerk; stated that Mr. Hinkle inappropriately utilized the OCFA's logo and resources in his campaign materials.

BBK Contract - Payment of Invoices

Brad Malamud, San Clemente, suggested that the City should not pay BBK invoices if they are received after the monthly due date set forth in BBK's retainer agreement; opined that public presentations should be limited to policy and issues and not include personal attacks.

11. **REPORTS**

A. **Commissions and Committees**

This item was deferred to the Council meeting of October 15, 2019.

B. **City Manager**

This item was deferred to the Council meeting of October 15, 2019.

C. **City Attorney**

This item was deferred to the Council meeting of October 15, 2019.

D. **Council Members**

(1) **Consideration of Establishing a Standing Committee on Homelessness**

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 4-0, to continue this item to the Council meeting of December 3, 2019.

12. **RESOLUTIONS/ORDINANCES**

None.

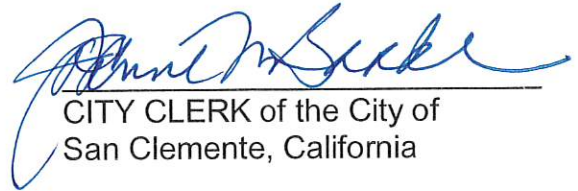
13. **ADJOURNMENT**

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM BANE, CARRIED 4-0, to adjourn at 11:30 p.m. in memory of Nancy Wright. The next Regular Council Meeting will be held on October 15, 2019 in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California. Closed Session items will be considered at 5:00 p.m. and the regular business meeting will take place at 6:00 p.m.

A Joint Council/Commissions/Committees meeting will be held on October 29, 2019 at 7:00 p.m. in the banquet room at the Municipal Golf Course, located at 150 E. Avenida Magdalena, San Clemente, California.



MAYOR PRO TEM of the City of
San Clemente, California



CITY CLERK of the City of
San Clemente, California