

CITY OF SAN CLEMENTE

City Council Minutes

Regular Meeting – November 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 November 19, 2019 at 5:00 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; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk

CLOSED SESSION

City Attorney Smith announced that Closed Session Item D involves two cases of anticipated litigation, as opposed to three as indicated on the agenda; advised that one of the anticipated litigation items relates to a demand for relief from sewer connection fees and potential Mitigation Fee Act litigation relating to 1410 Calle Mirador; stated that the second item relates to correspondence from the Department of Justice concerning ADA compliance and the City's Lyft/ButterFli contractors.

Brad Malamud, San Clemente, opined that Closed Session Item B constitutes a Brown Act violation since real property negotiations are no longer underway; asserted that the anticipated litigation items listed under Item D cannot be discussed in Closed Session because the parties were not named and supporting documents were not provided at least 72 hours prior to the meeting.

In response to Council inquiry, City Attorney Smith reviewed Brown Act noticing requirements, and asserted that the City has complied with those regulations.

Mayor Pro Tem Bane stated that he will recuse himself from Closed Session Item B and Regular Meeting Item 1-C because attorneys at Sheppard Mullin Law, the firm at which he is employed, represent Memorial Care in an unrelated manner.

Brad Malamud, San Clemente, requested to appeal Council's ability to meet in Closed Session on the items previously identified and conveyed his understanding of Council Policy and Procedure 1201-11 relating to appeals of Council actions.

During the ensuing discussion, Mayor Pro Tem Bane, assisted by City Attorney Smith, informed Mr. Malamud that his conduct is in violation of Council Policy Section 1201-11 (Section 4.4.12) and identified the reasons therefor.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 3-1 (COUNCILMEMBER FERGUSON VOTING NOE), to oppose Mr. Malamud's appeal.

Councilmember Ferguson reported that she will recuse herself from Closed Session Item B regarding real property negotiations concerning 654 Camino de los Mares, stating that she wishes to err on the side of caution with regard to Brown Act compliance.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to recess to Closed Session at 5:08 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: 11

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: Anthem Sales Management, LLC et al. v. City of San Clemente et al.
Case Number: 30-2019-01063861-CU-WM-CJC

Case Name: San Clemente Coastal Access Alliance, et al. v. City of San Clemente, et al.
Case Number: 30-2018-01034124-CU-WM-CJC

Case Name: City of San Clemente v. Foothill/Eastern Transportation Corridor Agency and County of Orange
Case Number: 30-2017-00934703-CU-PT-CXC

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

Case Name: City of San Clemente v. Goode, et al.
Case Number: OCSC 30-2018-01033695 CU-OR-CJC

Closed Session Items continued on following page

Case Name: City of San Clemente v. Toyota, et al.
Case Number: OCSC 30-2018-01037112-CU-MC-NJC

Case Name: City of San Clemente v. Michael Scott Shay
Case Number: OCSC 19HM08321 HJC

Case Name: City of San Clemente v. Derek Ramirez Owen
Case Number: OCSC 19HM10265 HJC

Case Name: City of San Clemente v. Derek Ramirez Owen
Case Number: OCSC 19HM10246 HJC

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 Ruosso

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

C. CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

Initiation of litigation pursuant to Government Code section 54956.9(d)(4)

Number of potential cases: 1

D. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION

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

Number of potential cases: 2

BUSINESS MEETING CONVENED

The City Council Business Meeting of November 19, 2019 convened at 6:06 p.m., with all members present.

INVOCATION

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

PLEDGE OF ALLEGIANCE

Councilmember Hamm led the Pledge of Allegiance.

A. Results of the Special Municipal Election Held on November 5, 2019

Jim Bieber, San Clemente, reviewed the results of the November 5, 2019 Special Municipal Election, noting that the successful candidate won by a large margin.

Rick Loeffler, San Clemente, noted that the Special Municipal Election of November 5, 2019 garnered a 37.5% voter turnout, which is a high turnout for a mail ballot election; urged Council to listen to the mandate of the people and represent their constituents.

Ryan Bourque, San Clemente, congratulated Councilmember-elect Gene James on being elected to serve the remaining term of the late Mayor Swartz and expressed pride in the community's choice.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to adopt Resolution No. 19-43 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RECITING THE FACT OF THE SPECIAL MUNICIPAL ELECTION HELD IN THE CITY ON NOVEMBER 5, 2019, DECLARING THE RESULTS, AND SUCH OTHER MATTERS AS PROVIDED BY LAW.

***Note:** The ceremonial induction of Councilmember-Elect Gene James into office will take place at the Council meeting of December 3, 2019. In addition, the election of the Mayor and Mayor Pro Tem for the coming year will take place at the December 3, 2019 City Council meeting.*

1. SPECIAL PRESENTATIONS**A. Toll Road Update**

Assistant City Manager Sund recapped the Toll Road Town Hall Meeting that took place on November 13, 2019 with regard to the South County Traffic Relief Effort (SCTRE); advised that the town hall was attended by approximately 130 people and that all public comments will be transcribed and sent to CalTrans; reviewed the major points in the proposed letter to CalTrans concerning the community's needs and desires.

During the ensuing discussion, Council directed that the letter to Caltrans request an extension of the public comment period for the preliminary draft screening criteria to 90 days to ensure time for adequate public participation in view of the upcoming holidays.

Ryan Bourque, San Clemente, reported on SCTRE public scoping meetings that will take place on November 20, 2019 and December 4, 2019; reported that he called for a forensic audit of the TCA and urged the Council to seek

audits of TCA contracts, in addition to the Venture Strategic contract; stated that Avenida Pico and Avenida Vista Hermosa are not designed to accommodate the rerouting of traffic proposed in the SCTRE; urged Council to support AB 1273 (Brough), to limit the planning authority of the TCA.

It was noted that the City's website will include information on the process for the public to provide written support for AB 1273.

It was agreed that Council will select a subcommittee after Councilmember-Elect James assumes office to assess whether or not the City should partner with organizations that support the TCA.

B. Update on Homeless Issue

Assistant City Manager Sund provided an update on costs incurred by the City to date with regard to its homeless efforts, noting that \$390,000 has been spent on legal costs, a one-time cost of \$76,000 was incurred for camp set-up, and a monthly cost of \$30,000 is being incurred for security guard services, portable restroom services, and clean up; noted that the monthly cost should decrease significantly due to the reduction in homeless persons who utilize the camp.

Mayor Pro Tem Bane provided an update on homeless-related federal and state lawsuits; stated that the Supreme Court will determine on December 6, 2019 whether or not it will hear the case of Martin v Boise; explained that if the court overturns the Martin v Boise decision, cities will be able to enforce their anti-camping ordinances.

Name not provided opined that the homeless camp is an unpermitted development in the Coastal Zone; asserted that the City is required to file an application for a Coastal Development Permit with the California Coastal Commission by December 14, 2019.

Susan Smith, San Clemente, spoke in support of relocating the homeless camp to the Family Assistance Ministries (FAM) parking lot at 1030 Calle Negocio; noted the FAM location would not require an EIR; requested that the proposed relocation be agendized.

Jinhy Yoon, San Clemente, stated that crime in Sea Summit and the surrounding area has increased as a result of the homeless camp; suggested that homeless individuals from other cities have relocated to San Clemente because of the camp.

Ryan Bourque, San Clemente, voiced concern that nearly \$400,000 has been spent on legal fees associated with the homeless situation; commended Council on the closure of Pico Park for maintenance;

questioned whether the City can legally relocate the camp and whether the FAM parking lot represents a viable alternative.

Susan Schissler, San Clemente, spoke in opposition to opening the Pico camp to non-residents; voiced concern that her safety, and the safety of her grandchildren, have been compromised as a result of homeless individuals near Sea Summit; urged Council to move the homeless camp to the FAM parking lot, which is located in the SB2 zone.

Marci Skinner, San Clemente, reported that the homeless camp has negatively affected the Sea Summit neighborhood and crime has increased; urged Council to not open the lot to individuals without ties to San Clemente and to relocate the encampment.

Doug Schaff, San Clemente, voiced concern that the Pico camp was established without notice to Sea Summit residents; reported that if the City expands the Pico camp, Sea Summit will file a lawsuit against the City.

Darryl McFann, San Clemente, conveyed that homeless individuals are residing in the canyons and the beach because they are not allowed in the camp due to a lack of ties to San Clemente.

C. **Overview of Request for Proposal (RFP) for the Re-Opening and Operation of San Clemente Hospital**

Mayor Pro Tem Bane recused himself from this agenda item because his law firm represents Saddleback Memorial Care on an unrelated issue; left the Chambers at 6:55 p.m.

Assistant City Manager Sund narrated a PowerPoint presentation entitled "Request for Proposal, Potential Strategic Partnership/Affiliation for the property at 654 Camino De Los Mares - Former Hospital Site" and responded to inquiries. A hard copy of Mr. Sund's presentation is on file with the City Clerk.

Brad Malamud, San Clemente, opined that the City cannot issue an RFP without first making it available to the public.

Assistant City Manager Sund noted that the RFP will be agendized for Council deliberations prior to being released.

Mayor Pro Tem Bane returned to the dais at 7:01 p.m.

2. ORAL COMMUNICATIONS (PART 1)

Review of City Legal Bills

Brad Malamud, San Clemente, asserted that the City Attorney should not review legal bills; suggested that the City hire an in-house attorney and retain a separate attorney to review legal bills; urged that the issue be agendaized.

City-Wide Smoking Ban/Purchase of Pressure Washer to Clean City Sidewalks

Rick Loeffler, San Clemente, stated that he is circulating a petition to ban smoking in San Clemente for health and safety reasons; urged Council to purchase a pressure washer to clean City sidewalks.

Small Cell Antennas/Rancho San Clemente Severe Fire Zone

Vonne Barnes, President of the Rancho San Clemente Community Association, narrated a PowerPoint presentation concerning the importance of requiring cell tower applicants to remove their obsolete cell towers before they are allowed to erect new towers in the Rancho San Clemente severe fire zone; voiced concern with the slow response by San Clemente Police Services to a call concerning a trespasser who was using a gas-powered weed eater in Knob Hill. A hard copy of Ms. Barnes' PowerPoint is on file with the City Clerk.

Code Compliance Fine (Bicycle Rental Shop at North Beach)

Pete Van Nuys, Proprietor of the bicycle rental shop at North Beach, explained the circumstances concerning a fine levied by the City's Code Compliance Division for parked bicycles impeding the public right-of-way; stated that he never violated any City Codes; commented that no issues were experienced until the City installed planters at the point where the crosswalk intersects the multi-use path; asserted that the planters, combined with his bicycles, frustrated users of high-speed motorized bikes who travel along the multi-use path.

Name Identification on Warrant Register

Jim Bieber, San Clemente, voiced concern that his name was associated with a \$1,400 City legal bill on the Warrant Register; asserted that the City Attorney incorrectly explained the invoice as costs incurred to respond to his Public Records Act request as opposed to being associated with the lawsuit that he filed to obtain public records; displayed a PowerPoint presentation which is on file with the City Clerk.

Pico Camp Cost/Recommended Relocation

Susan Smith, San Clemente, requested that Council agendaize consideration of relocating the homeless camp to the SB2 zone; voiced concern with costs incurred by the City as a result of the homeless camp.

MOTION BY COUNCILMEMBER FERGUSON to agendaize a discussion for the December 3, 2019 Council meeting regarding the homeless campsite on Avenida Pico and possible changes/alternate locations. **The motion died for lack of a second.**

Sand Pushing/North Beach Train Station Clean-Up

Ken Nielsen, San Clemente, thanked the City for its efforts in sand pushing; suggested the City's Vactor Truck could be used to clean ground surfaces at the North Beach Train Station.

Employee Satisfaction Survey

Tony Rubolino, San Clemente, summarized the results of the Employee Satisfaction Survey that was completed in 2017; noted that a lawsuit was recently filed by a former City employee alleging age discrimination.

3. MOTION BY COUNCILMEMBER WARD, 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**

City Attorney Smith announced that Council took no reportable actions during tonight's Closed Session; explained that Closed Session Item A (City of San Clemente v Foothill/Eastern Transportation Corridor and County of Orange), Item B (real property negotiations for 654 Camino de los Mares), and Item C (anticipated litigation), were not discussed and will be agendaized for the Council meeting of December 3, 2019.

6. CONSENT CALENDAR

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0, to approve the Consent Calendar, with the removal of Items C, I, M, N, P.

A. City Council Minutes

- (1) MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0, to approve the Joint City Council/Commissions/Committees Meeting Minutes of October 29, 2019.

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

- (1) Zoning Administrator Regular Meeting Minutes of November 7, 2019.
- (2) Planning Commission Regular Study Session Minutes of November 6, 2019.
- (3) Planning Commission Regular Meeting Minutes of November 6, 2019.

D. Resolution to Oppose Oil and Gas Drilling, Fracking and Related Techniques

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0, to adopt Resolution No. 19-44 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, TO PROTECT THE COAST OF CALIFORNIA FROM OFFSHORE OIL AND GAS DRILLING, FRACKING AND RELATED TECHNIQUES.

E. Notice of Completion – Sewer Line Point Repair Project

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

1. Authorize the transfer of \$5,670 from the Water Fund Depreciation Reserve to Account 054-476-43420-000-29205.
2. Accept Sewer Line Point Repair Project No. 29205 from the contractor, O'Connell Engineering and Construction, Inc., LLC.

Action continued on following page

3. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the Sewer Line Point Repair.
4. 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 O’Connell Engineering and Construction, Inc.
5. Authorize the City Clerk to release the Performance Bond upon receipt of a Warranty Bond in the amount of 25% of the construction cost.

F. **Notice of Completion – FY 18/19 Traffic Signal Equipment Upgrades**

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

1. Accept the FY 18/19 Traffic Signal Equipment Upgrades, Project Nos. 17335, 18807, 18808, and 19320, from the contractor, International Line Builders, Inc.
2. Authorize the Mayor to execute, and the City Clerk to record, the Notice of Completion for the FY 18/19 Traffic Signal Equipment Upgrades.
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 International Line Builders, 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.

G. **Final Tract Map 18065 - Santiago Mixed Use Residential and Commercial Condominiums at 1010 South El Camino Real**

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

1. Accept on behalf of the City of San Clemente the water rights as dedicated.
2. Approve Final Tract Map 18065 as it conforms to the requirements set forth in the Subdivision Map Act and the previously approved Tentative Tract Map.

Action continued on following page

3. Authorize the Public Works Director/City Engineer to execute the Final Tract Map.
4. Authorize the City Clerk to execute and submit Final Tract Map 18065 to the County of Orange Recorder's Office for recordation.

H. **Final Parcel Map 2016-159, Palizada Condominiums at 315 Avenida Palizada**

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

1. Accept on behalf of the City of San Clemente the water rights as dedicated.
2. Accept on behalf of the City of San Clemente the easement for sidewalk and public access purposes as dedicated.
3. Approve Final Parcel Map 2016-159 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 upon verification that the CC&Rs have been approved.
5. Authorize the City Clerk to execute and submit Final Parcel Map 2016-159 to the County of Orange Recorder's Office for recordation.

J. **Contract Amendment – Water Reclamation Plant (WRP) Electrical Systems Replacement**

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

1. Approve, and authorize the Mayor to execute, Amendment No. 2 to Contract C17-01, by and between the City of San Clemente and Linkture Consulting Engineers, relating to the Water Reclamation Plant Electrical Systems Replacement. This amendment increases the contract amount from \$84,044 to \$184,287, an increase of \$100,243, and extends the contract term to December 30, 2021.
2. Approve a budget transfer in the amount of \$2,500 from Account 052-466-43420-000-24401 (Water Fund Depreciation Reserve) to Account 054-476-45300-000-16205 (Sewer Fund Depreciation Reserve) for the Calle Agua Pump Station Electrical Panel Study included in the Second Amendment.

K. **Contract Awards – Support Services for the City of San Clemente’s Clean Ocean Fee Renewal Process**

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

1. Approve, and authorize the City Manager to execute, Contract C19-76, by and between the City of San Clemente and NCE, providing for the Clean Ocean Fee Rate Study and Fee Analysis, in an amount not to exceed \$39,800.
2. Approve, and authorize the City Manager to execute, Contract C19-77, by and between the City of San Clemente and Koppel & Gruber Public Finance, providing for Clean Ocean Fee Public Hearing and Proposition 218 Balloting Services, in an amount not to exceed \$56,930.

L. **Payment Authorization for Purchase, Installation and Licensing of Tigtrope Cablecast Server to Replace Failed 360 Server**

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0, to authorize payment to Triton Technology Solutions in the amount of \$35,474.28 in Fiscal Year 2019-20 for the purchase, installation, and licensing of a Tigtrope Cablecast Server.

O. **Contract Award – Purchase of Electricity**

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0, to approve, and authorize the City Manager to execute, Contract C19-79, a two-year contract by and between the City of San Clemente and Calpine Energy Solutions, providing for the purchase of electricity for an amount not to exceed \$37.88 per megawatt hour.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

C. **Warrant Register**

Brad Malamud, San Clemente, asserted that invoices on the Warrant Register lack adequate descriptions of the Best, Best & Krieger (BBK) invoices.

City Attorney Smith recused himself from this item, and left the dais at 7:35 p.m., when the Best, Best & Krieger invoices became the subject of discussion.

Mayor Pro Tem Bane responded that the invoices from BBK that do not include descriptions represent BBK monthly retainer fees.

Jim Bieber, San Clemente, continued the PowerPoint presentation that he gave during Oral Communications Part I; voiced concern with legal fees associated with his Public Records Request for documents relating to the recount of Measure OO (transient occupancy tax ballot measure) from the November 6, 2016 General Municipal Election; asserted that the legal fees were necessitated because he had to file a lawsuit to obtain public records. A hard copy of Mr. Bieber’s PowerPoint is on file with the City Clerk.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 4-0, to approve the following:

Warrant Nos. 562683
through 562844, paid on
11-1-19, in the amount of.....\$2,323,117.85

Wire Transfers Nos. 2128
through 2135, and Warrant Nos.
562845 through 562995, paid on
11-8-19, in the amount of.....\$2,663,112.04

Warrant Nos. 562996 through
563183, paid on 11-15-19,
in the amount of.....\$1,575,121.68

TOTAL WARRANT REGISTER.....\$6,561,351.57

Payroll Register

Warrant No. 759 and
Automatic Deposit Advises
60090 through 60377, for the period
10-21-19 through 11-3-19, paid on
11-8-19, in the amount of.....\$ 494,584.30

TOTAL PAYROLL REGISTER.....\$ 494,584.30

City Attorney Smith returned to the dais at 7:41 p.m.

I. **Community Facilities District No. 2006-1 (Marblehead Coastal) Local Agency Special Tax and Bond Accountability Act Report (SB 165) for Fiscal Year Ended June 30, 2019**

Susan Smith, San Clemente, stated that the Sea Summit community has contributed to the Marblehead Coastal Tax Bonds; objected to the placement of a homeless camp in the Marblehead Coastal area due to her belief that the camp represents a misuse of bond funding that was intended to improve the City.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER WARD, CARRIED 3-1 (COUNCILMEMBER HAMM VOTING NOE), to accept and file the Community Facilities District No. 2006-1 (Marblehead Coastal) Local Agency Special Tax and Bond Accountability Act Report (SB 165) for the fiscal year ended June 30, 2019.

M. **Contract Award – Water Reclamation Plant (WRP) Electrical Systems Replacement Phase I Plant Main Distribution Panel (PMD)**

Todd Saunders, Pacific Industrial Electric, explained that his company submitted a bid for the subject project and was the third lowest bidder; stated that the two lowest bidders failed to provide all required documents and hence should be disqualified.

Utilities Director Rebensdorf responded to Council inquiries regarding bid irregularities and the project timeline.

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to:

1. Approve the plans and specifications for the Water Reclamation Plant Electrical Systems Replacement Phase I Plant Main Distribution Panel, Project No. 16205.
2. Reject the bid protest submitted by Pacific International Electric Company, Inc. as meritless, waive the immaterial bid error in the bid submitted by Global Power Group, Inc., the lowest responsible bidder submitting a responsive bid.
3. Approve a supplemental appropriation in the amount of \$500,160 from the Sewer Fund Depreciation Reserve to Account 054-476-45300-000-16205.
4. Approve, and authorize the City Manager to execute, Contract C19-78, by and between the City of San Clemente and Global Power Group Inc., providing for the Water Reclamation Plant Electrical Systems Replacement Phase I Plant Main Distribution Panel, Project No. 16205, in the amount of \$1,405,160.64.

N. **Transfer to Capistrano Shores of the 4 by 325-Foot (1,300 Square Foot) Portion of Senda de la Playa to the Capistrano Shores Mobilehome Park**

Eric Anderson, San Clemente, presented a letter from Loftin and Bedell, the law firm representing Capistrano Shores Mobile Home Park, which addresses concerns from the Planning Commission meeting of November 6, 2019. A hard copy of the subject letter is on file with the City Clerk.

Following discussion, MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 4-0, to:

1. Adopt Resolution No. 19-45 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, REGARDING THE TRANSFER OF A 4 BY 325-FOOT (1,300-SQUARE FOOT) PORTION OF SENDA DE LA PLAYA TO THE CAPISTRANO SHORES MOBILEHOME PARK.
2. Find that the transfer is categorically exempt from environmental review under Class 5 (Minor Alterations in Land Use Limitations) per State CEQA Guidelines, section 15303.
3. Find that the transfer conforms to the City's General Plan per Government Code Section 65402.
4. Find that the transfer is of the common benefit per Government Code Section 37350.
5. Direct Staff to file a Notice of Exemption for the transfer within five days after approval.
6. Direct Staff to execute the grant deed effectuating the transfer within five days after the approval.

P. **Code Enforcement Legal Services**

Management Analyst Johnston reviewed the contents of the Administrative Report.

Attorney Matt Silver, with Silver & Wright, reviewed the services that he provides to the City with regard to enforcement of Municipal Code violations issued by the Orange County Sheriff's Department; explained that his goal is compliance with the law, as opposed to punishment; noted that the proposed contract is for a flat-rate amount, which reflects a reduction from his hourly rate.

Brad Malamud, San Clemente, spoke in support of Attorney Silver charging a flat-fee rate; voiced concern with the City's current policy of requiring appellants to pay the cost associated with administrative hearings unless decisions are rendered in their favor.

Rick Loeffler, San Clemente, noted that the quality of life in his neighborhood has increased significantly due to Mr. Silver's efforts; explained the importance of prosecuting violations to ensure quality of life and urged Council to approve the contract.

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

1. Approve, and authorize the Mayor Pro Tem to execute, Contract C19-80, by and between the City of San Clemente and the law firm of Silver & Wright LLP, providing for code enforcement legal services, for a not-to-exceed amount of \$186,000 for FY 2019-20, and annual renewal each fiscal year, subject to approval through the annual budget adoption.
2. Approve, and authorize the Mayor Pro Tem to execute, Contract C19-81, by and between the City of San Clemente and the law firm of Silver & Wright LLP, providing for municipal citation legal services, for a not-to-exceed amount of \$99,600 for FY 2019-20, and annual renewal each fiscal year, subject to approval through the annual budget adoption.
3. Approve a supplemental appropriation from the General Fund's Unassigned Fund Balance in the amount of \$91,000 to Code Compliance Other Legal Services, Account 001-451-43640-000-00000.

MEETING RECESSED

Council recessed at 8:33 p.m. and reconvened at 8:49 p.m., with all members present.

7. **PUBLIC HEARINGS**

A. **Zoning Amendment 19-290 – Regulations for Secondhand Dealers (Thrift Store Ordinance)**

Continued Public Hearing to consider a City-initiated amendment to San Clemente Municipal Code Title 17, the Zoning Ordinance, regarding the regulation of secondhand dealers (thrift stores).

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to continue the Public Hearing concerning the "Thrift Store Ordinance" to the Regular City Council meeting of December 3, 2019.

B. **Zoning Amendment 19-343 – Modifying Nonconforming Provisions for Mobilehomes and Mobilehome Parks**

Public Hearing to consider a City-initiated proposal to amend San Clemente Municipal Code Title 17, the Zoning Ordinance, regarding nonconforming mobilehomes and mobilehome parks.

Senior Planner Savage reviewed 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 MAYOR PRO TEM BANE, CARRIED 4-0, to:

1. Find and determine that the proposed amendments are not a project as defined by the State CEQA Guidelines sections 15378(b)(2) and 15378(b)(5).
2. Introduce Ordinance No. 1685 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING SUBSECTION 17.28.190.A, SECTION 17.72.020, SUBSECTION 17.72.030.C.3, AND SUBSECTION 17.72.060.E OF TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE TO CLARIFY STANDARDS REGULATING NONCONFORMING MOBILEHOME AND MOBILEHOME PARK USES.

C. **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**

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.

City Attorney Smith reported that because he collaborated with Staff in bringing items 7C and 7D, relating to small cell towers, to Council, Attorney Cristina Talley will act as legal counsel to Council as the hearing body; stated that he will be available from the audience to respond to questions.

City Attorney Smith left the dais at 8:54 p.m. Legal Counsel Talley assumed her seat at the dais.

Mayor Pro Tem Bane announced that he will recuse himself from discussion on this item as he represents the Reserve Maintenance Corporation, which is impacted by the subject permit application; left the Chambers at 8:54 p.m.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 3-0 (MAYOR PRO TEM BANE RECUSED), to table Conditional Use Permit (CUP) 18-534, pursuant to Tolling Agreement No. 3.

Mayor Pro Tem Bane returned to the dais at 8:55 p.m.

D. **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**

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.

During Agenda Item 7C, City Attorney Smith reported that because he collaborated with Staff in bringing Items 7C and 7D, relating to small cell towers, to Council, Attorney Cristina Talley will act as legal counsel to Council as the hearing body; stated that he will be available from the audience to respond to questions.

City Attorney Smith left the dais at 8:54 p.m. Legal Counsel Talley assumed her seat at the dais.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 4-0, to table Conditional Use Permit (CUP) 18-535, pursuant to Tolling Agreement No. 3.

City Attorney Smith returned to the dais at 8:56 p.m.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **Ordinance Introduction - Adding Chapter 12.40, Train Stations, to the San Clemente Municipal Code Relating to Ticket-Required Areas of the City's Transit Facilities**

Report from the City Attorney concerning the possibility of introducing an Ordinance to add Chapter 12.40, Train Stations, to the San Clemente Municipal Code Relating to Ticket-Required Areas of the City's Transit Facilities.

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

Rick Loeffler, San Clemente, spoke in support of the proposed ordinance to establish ticket-required areas at City transit facilities to address a safety issue, as opposed to a homeless issue; questioned whether the Orange County Sheriff's Department will enforce the Ordinance.

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

1. Introduce Ordinance No. 1686 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE ADDING CHAPTER 12.40, TRAIN STATIONS, TO THE SAN CLEMENTE MUNICIPAL CODE RELATING TO TICKET-REQUIRED AREAS OF THE CITY'S TRANSIT FACILITIES.
2. Instruct Staff to prepare and post adequate demarcation and signage at the City's train stations.

B. **Ordinance Introduction - Adding Section 12.28.030 to the San Clemente Municipal Code Relating to Tents in City Parks**

Report from the City Attorney concerning the possibility of introducing an Ordinance to add Section 12.28.030 to the San Clemente Municipal Code relating to tents in City parks.

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 4-0, to introduce Ordinance No. 1687 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE ADDING SECTION 12.28.030 TO THE SAN CLEMENTE MUNICIPAL CODE RELATING TO TENTS IN CITY PARKS.

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

Marblehead Preserve Breeding Season

Ken Orr, San Clemente, reported that the breeding season in the Marblehead Preserve begins in January and ends in August; voiced concern with the negative impact that homeless individuals have on animals and their ability to successfully breed.

It was agreed that City Manager Makshanoff will ask Lt. Manhart to provide an update on security measures and patrols within the Marblehead Preserve.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

Landslide North of Mariposa on Beach Trail

City Manager Makshanoff reported that a landslide occurred on the beach trail north of Mariposa; urged members of the public to not trespass and to refrain from using the beach trail until the trail is deemed safe and reopened for public use.

C. City Attorney

None.

D. Council Members

Keeping California Safe Act

Councilmember Ferguson proposed, and Council agreed, to agendaize for Council consideration a resolution supporting the Keeping California Safe Act of 2020.

Joint Council/Commissions/Committees Meeting

Councilmember Hamm reported that he missed the October 29, 2019 Joint Council/Commissions/Committees meeting because he was on duty responding to various wildfires throughout California.

12. RESOLUTIONS/ORDINANCES

None.

13. ADJOURNMENT

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to adjourn at 9:15 p.m. The next Regular Council Meeting will be held on December 3, 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.



MAYOR of the City of
San Clemente, California



CITY CLERK of the City of
San Clemente, California