

CITY OF SAN CLEMENTE

City Council Minutes

Special and Regular Meeting – March 17, 2020

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 Special Meeting of the San Clemente City Council was called to order on March 17, 2020 at 4:30 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Bane.

PRESENT HAMM*, FERGUSON, JAMES*, WARD*, MAYOR BANE*

*Participated in meeting via teleconference

ABSENT None.

STAFF PRESENT Robert Dunek*, Interim City Manager; Scott Smith, City Attorney; Erik Sund, Assistant City Manager; Laura Campagnolo, Deputy City Clerk

*Participated in meeting via teleconference

CLOSED SESSION

City Attorney Smith announced that a change to the title of Closed Session Item G, explaining that the title should read "Conference with County Counsel and City Attorney"; explained that Closed Session Item D (relating to Conference with Legal Counsel – Anticipated Litigation) will not be discussed this evening.

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 5-0, to recess to Closed Session at 4:30 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: San Clemente Coastal Access Alliance, et al. v. City of San Clemente, et al.

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

Closed Session Items continued on following page

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

- C. **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**
Initiation of litigation pursuant to Government Code section 54956.9(d)(4)
Number of potential cases: 3
- E. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**
Pursuant to Government Code section 54956.8
Property: 2.2 acre section of and 80 acre parcel on the southwest corner of Avenida La Pata and Vista Hermosa, Assessor's Parcel Number 678-163-01
Agency Negotiators: City Manager and Assistant City Manager
Negotiating Parties: City of San Clemente, proposing parties and/or their authorized agent(s)
Under Negotiation: Consideration of proposals for acquisition or lease of surplus property
- F. **CONFERENCE WITH LABOR NEGOTIATORS**
Pursuant to Government Code Section 54957.6
Agency designated representative: Assistant City Manager
Unrepresented employees: All Employees
Employee organization: San Clemente City Employees Association
- G. **CONFERENCE WITH COUNTY COUNSEL AND CITY ATTORNEY - THREAT TO PUBLIC SERVICES OR FACILITIES**
Pursuant to Government Code Section 54957
Consultation with: City Attorney

BUSINESS MEETING CONVENED

The City Council Business Meeting of March 17, 2020 convened at 6:10 p.m., with all members participating, either in person or via teleconference.

PLEDGE OF ALLEGIANCE

Councilmember Ferguson led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

A. **Toll Road Update**

Assistant City Manager Sund reported that the Transportation Corridor Agency (TCA) formally concluded its scoping process for the toll road and will proceed with the Los Patrones extension with the County as the lead agency. Mr. Sund further noted that the City's press release, together with other information relating to the toll road, can be found on the City's website.

B. **Update on Homeless Issue**

None.

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

City Attorney Smith reported that persons who wish to address Council, but are not in attendance due to the coronavirus epidemic, may email the Deputy City Clerk, who will read the email to Council until the 3-minute time limitation for individual public comments is reached.

No Oral Communications were expressed, either in person or via email.

3. MOTION BY MAYOR PRO TEM FERGUSON, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to waive reading in full of all Resolutions and Ordinances.

4. **CONSIDERATION OF AGENDIZING ITEMS REQUIRING IMMEDIATE ACTION**

Mayor Pro Tem Ferguson reported that one item requires immediate action at this meeting, i.e., Council consideration of a Resolution proclaiming a local emergency regarding Novel Coronavirus (COVID-19) and Ratifying the Proclamation of Local Emergency by the City Manager.

This item will be heard under New Business, and can be found on page 12 of these minutes.

5. **CLOSED SESSION REPORT - CITY ATTORNEY**

City Attorney Smith noted that Council took no reportable actions during tonight's Closed Session; explained that at the March 2, 2020 City Council meeting, Council authorized the City Attorney to renew an offer to purchase a 10-acre site at Pico Canyon originally owned by the Rancho San Clemente Business Park Association and subsequently transferred to the Emergency Shelter Coalition.

City Attorney Smith further reported that Mayor Bane recused himself from Closed Session Item B relating to the case entitled City of San Clemente v. Foothill/Eastern Transportation Corridor.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR BANE, CARRIED 5-0, to approve the Consent Calendar, with the removal of Items 6-C, 6-E, 6-I and 6-L.

A. **City Council Minutes**

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

- (1) Approve the City Council Adjourned Regular Meeting minutes of February 18, 2020.
- (2) Approve the City Council Adjourned Regular Meeting minutes of March 2, 2020.

B. **Commission and Committee Minutes**

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

- (1) Beaches, Parks and Recreation Commission Regular Meeting minutes of February 11, 2020.
- (2) Planning Commission Adjourned Regular Meeting minutes of March 4, 2020.
- (3) Zoning Administrator Regular Meeting minutes of March 5, 2020.

D. **Contract Award – Arterial Street Pavement Maintenance – FY 2020 for El Camino Real (Avenida Estacion to Avenida Gaviota) and Avenida Pico (El Camino Real to Calle De Los Molinos), and Pavement Repairs for the Water Division, and Pavement Repairs in Various Locations**

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

1. Approve the plans and specifications for the Arterial Street Pavement Maintenance – FY 2020 for El Camino Real (Avenida Estacion to Avenida Gaviota) and Avenida Pico (El Camino Real to Calle De Los Molinos), Project No. 10320, and pavement repairs for the Water Division, Project No. 24400, and pavement repairs in various locations, Project No. 27306.
2. Approve, and authorize the City Manager to execute, Contract C20-18, by and between the City of San Clemente and Palp, Inc., dba Excel Paving, providing for the Arterial Street Pavement Maintenance – FY 2020 for El Camino Real (Avenida Estacion to Avenida Gaviota) and Avenida Pico (El Camino Real to Calle De Los Molinos), and pavement repairs for the Water Division, and pavement repairs in various locations, in the amount of \$1,158,306.

F. **Time Extension for Updated Subdivision Improvement Agreement, Parcel Map 2006-287 – Lee Subdivision at 3812 Via Del Campo**

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

1. Approve the request by The Margaret Chui Lee Trust (subdivider of Final Parcel Map 2006-287) for a 12-month extension of time in which to complete the subdivision improvements.
2. Approve, and authorize the Mayor to execute, the Updated Subdivision Improvement Agreement by and between the City of San Clemente and The Margaret Chui Lee Trust.

G. **Notice of Completion – Aquatics Center Patch and Paint**

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

1. Accept the construction of the Aquatics Center Patch and Paint, from the contractor, Pacific Rim Painting Company, Project No. 19511. (Contract C19-85)
2. Authorize the Public Works Director/City Engineer to execute and record the Notice of Completion for the Aquatics Center Patch and Paint.
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, Pacific Rim Painting Company.
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. **Contingency Increase for the Via Cascadita Street Rehabilitation Project**

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

1. Approve a transfer of an appropriation in the amount of \$205,000 from the Street Improvement Fund Via Montego Street Rehabilitation Project, Account 042-848-45300-000-17346 to Via Cascadita Street Rehabilitation Project, Account 042-848-45300-000-17345, to fund the increased scope of the Via Cascadita Street Rehabilitation Project.
2. Approve a \$205,000 increase in construction contingency for the Via Cascadita Street Rehabilitation Project, Project No. 17345.

J. **Public Mural at the End-of-Pier Restroom Facility**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR BANE, CARRIED 5-0, to approve the installation and design of public art entitled "Open Door Policy" at the end-of-pier restrooms.

K. Funding Authorization - Construction of an Orange County Sheriff Satellite Station at the Outlets at San Clemente

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

1. Approve a supplemental appropriation of \$34,700 from the Public Facilities Construction Fee Fund balance to Account 030-818-43890-000-00000 (Other Contractual Services) for construction of an Orange County Sheriff Satellite Station at the Outlets at San Clemente.
2. Authorize the Assistant City Manager to approve reimbursement up to \$34,700 to the Outlets at San Clemente for construction of an Orange County Sheriff Satellite Station at the Outlets at San Clemente.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

C. Warrant Register

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

Approve Wire Transfers Nos. 2200 through 2203, and Warrant Nos. 565227 through 565408, paid on 3/6/20, in the amount of.....\$ 1,292,922.07

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

Approve Wire Transfers Nos. 2204 through 2207, and Warrant Nos. 565409 through 565585, paid on 3/13/20, in the amount of.....\$ 3,329,411.30

TOTAL WARRANT REGISTER.....\$ 4,622,333.37

Payroll Register

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

Warrant Nos. 781 through 782 and Automatic Deposit Advises 62665 through 62963, for the period 2/24/20 through 3/8/20, paid on 3/13/20, in the amount of.....\$ 491,067.91

TOTAL PAYROLL REGISTER.....\$ 491,067.91

E. **Conveyance of Property Interest for Several Parcels in the Talega Community**

In response to Council inquiry, Staff confirmed that the subject agenda item is unrelated to any extension of Los Patrones Road and pertains solely to protecting open space and maintaining access to trail systems in Talega.

MAYOR BANE, SECOND BY COUNCILMEMBER WARD, CARRIED 4-1 (MAYOR PRO TEM FERGUSON VOTING NOE), to adopt Resolution No. 20-10 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ACCEPTING A GRANT DEED CONVEYING CERTAIN PROPERTY INTERESTS FROM TALEGA ASSOCIATES TO THE CITY OF SAN CLEMENTE.

I. **2019 General Plan Annual Progress Report**

MOTION BY MAYOR PRO TEM FERGUSON to:

1. Adopt Resolution No. 20-11 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ACCEPTING THE GENERAL PLAN 2019 ANNUAL PROGRESS REPORT, with the incorporation of the following language into the table on Page 6I-107:

“The consultant is to review the existing inclusionary zoning policy and consider employing parameters that also include actual production incentives if affordable housing is the goal. In the event this direction results in a higher contract cost, the issue is to be agendized for Council consideration.”

2. Direct Staff to submit the 2019 Annual Progress Report to the State as required by law.
3. Direct Staff to update the Fiscal Year 2020-2021 Strategic Implementation Program in the 2019 Annual Progress Report for consistency with changes, if any, the Council makes in its approval of the implementation program.

THE MOTION DIED FOR LACK OF A SECOND.

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

1. Adopt Resolution No. 20-11 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ACCEPTING THE GENERAL PLAN 2019 ANNUAL PROGRESS REPORT.
2. Direct Staff to submit the 2019 Annual Progress Report to the State as required by law.
3. Direct Staff to update the Fiscal Year 2020-2021 Strategic Implementation Program in the 2019 Annual Progress Report for consistency with changes, if any, the Council makes in its approval of the implementation program.

L. **Appropriation of Legal Fees - Anthem Sales Management (Shikli) v. City of San Clemente**

Council requested that future agenda reports identify funding remaining in the General Fund Unassigned Fund Balance when supplemental appropriations are being requested.

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

1. Approve the estimated legal costs for the case entitled Anthem Sales Management (Shikli) v. City of San Clemente.
2. Approve a supplemental appropriation from the General Fund's Unassigned Fund Balance in the amount of \$168,000 to Other Legal Services, Account 001-441-43640-000-00000.

7. **PUBLIC HEARINGS**

A. **Prohibition of Smoking in Public Places in San Clemente**

Continued Public Hearing to consider a City Council-initiated proposal to prohibit smoking in public places in San Clemente.

MOTION BY MAYOR BANE, SECOND BY COUNCILMEMBER JAMES, CARRIED 5-0, to defer this item to a future meeting date to be determined and direct the City Clerk to advertise the Public Hearing with a revised scope to include consideration of flavored electronic cigarette sales.

B. **Establishment of a Fee for Required Inspections and Ongoing Monitoring for Properties Subject to Historic Property Preservation Agreements with the City**

Public Hearing to consider the establishment of fees to cover costs incurred by the City in conducting the mandatory five-year inspections of historic properties that have entered into Historic Property Preservation (Mills Act) Agreements with the City.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 5-0, to continue the Public Hearing to the Regular City Council Meeting of April 21, 2020.

C. **Artis Memory Care (2401 Calle Frontera) - Specific Plan Amendment 19-014, Tentative Parcel Map 19-021, Site Plan Permit 19-022, Architectural Permit 19-023 and Conditional Use Permit 19-094**

Public Hearing to consider a request to construct and operate a single-story, 72-bed State-licensed residential care facility for the elderly dedicated to memory care residents on approximately 2.5 acres of land to be addressed as 2401 Calle Frontera. The project also includes the subdivision of a 5.6-acre parcel and text amendments to the Marblehead Inland Master Specific Plan.

MOTION BY MAYOR BANE, SECONDED BY COUNCILMEMBER HAMM to continue the Public Hearing to the Council meeting of April 21, 2020.

In response to Council concern about potential due process challenges by the public should the Public Hearing go forward this evening, Senior Planner Roxas pointed out that the first recommended Condition of Approval contains an indemnity clause.

Mayor Pro Tem Ferguson took a straw vote to determine if Council is in favor of deferring the Public Hearing to a future Council meeting. Councilmember Hamm and Ferguson voted to defer the Public Hearing to April 7, 2020. Mayor Bane and Councilmembers James and Ward voted to hear this item at this time.

Mayor Pro Tem Ferguson opened the Public Hearing.

Mark McGuire, attorney representing the applicant, stated that no public comments were received at the Planning Commission hearing on the subject project; asserted that the project is time-critical and voiced concern with delaying the Public Hearing.

Keith Palmer, Project Architect, thanked Council for moving forward with the Public Hearing this evening.

Senior Planner Roxas reviewed the contents of the Administrative Report.

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

1. Close the Public Hearing.
2. Determine the project is exempt from CEQA pursuant to the California Environmental Quality Act (CEQA) (California Public Resources Code [PRC] §21000 et seq. (Section 21083.3 and the State CEQA Guidelines (Title 14, California Code of Regulations [CCR] §15000 et seq.) Section 15183 which allows for a streamlined environmental review process for projects that are consistent with the densities established by existing zoning, community plan or general plan policies for which an Environmental Impact Report (EIR) was certified.
3. Adopt Resolution No. 20-12 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA APPROVING SPECIFIC PLAN AMENDMENT 19-014, TENTATIVE PARCEL MAP 19-021, SITE PLAN PERMIT 19-022, ARCHITECTURAL PERMIT 19-023, AND CONDITIONAL USE PERMIT 19-094, FOR ARTIS MEMORY CARE FACILITY, A REQUEST TO DEVELOP A 72-BED MEMORY CARE ASSISTED LIVING RESIDENCE ON 2.5 ACRES OF VACANT LAND LOCATED AT ASSESSOR'S PARCEL NUMBER 679-021-05, TO BE ADDRESSED AS 2401 CALLE FRONTERA.
4. Authorize the Public Works Director/City Engineer to execute and record any necessary easement quitclaim deeds for any portion of storm drain easement in conflict with proposed improvements.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

This item was added to the agenda under Agenda Item 4, Consideration of Agendizing Items Requiring Immediate Action.

A. **Resolution of the City Council of the City of San Clemente, California, Proclaiming a Local Emergency Regarding Novel Coronavirus (COVID-19 and Ratifying the Proclamation of Local Emergency by the City Manager**

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

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR BANE, CARRIED 5-0, to adopt Resolution No. 20-13 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA PROCLAIMING A LOCAL EMERGENCY REGARDING NOVEL CORONAVIRUS (COVID-19), AND RATIFYING THE PROCLAMATION OF LOCAL EMERGENCY BY THE CITY MANAGER, with the modification to increase the City Manager's contract authority level to \$50,000.

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

None.

11. **REPORTS**

A. **Commissions and Committees**

1. **Public Safety Committee (Appointment of Members)**

Report from the City Clerk concerning appointment of members to the Public Safety Committee.

Deputy City Clerk Campagnolo read an email from John Thompson, San Clemente, which voiced concern with the City's response to COVID-19; stated his interest in serving on the new Public Safety Committee. A hard copy of Mr. Thompson's email, dated March 17, 2020, is on file with the City Clerk.

MOTION BY COUNCILMEMBER JAMES, SECOND BY MAYOR PRO TEM FERGUSON, CARRIED 5-0, to:

1. Appoint Nicholas Berkuta, Joe Janis, Rick Loeffler and Gary Walsh to the Public Safety Committee.
2. Council determined to not fill the fifth vacancy on the Public Safety Committee at this time.
3. Rather than set term limits, Council determined that members will serve on the Public Safety Committee until Council determines that the Committee is no longer needed.

B. **City Manager**

City Response to COVID-19

Assistant City Manager Sund provided an overview of the City's response to COVID-19; noted that the City is maintaining a COVID-19 page on the City's website where the public can access current information relating to State, County and City responses to the coronavirus pandemic.

C. **City Attorney**

None.

A. **Council Members**

City Response to COVID-19

Mayor Bane reported that the City received the COVID-19 order from the County of Orange, and will work with the County to work through questions; stated that he has been in contact with Congressman Levin's office concerning Federal funding that could be made available to the City; stated that San Clemente's declaration of a public emergency allows it to be among the first in line for COVID-19 expenditure reimbursements from State and Federal funds; reported that the City is reaching out to County Health, which is the lead on the possibility of reopening the San Clemente Hospital; commended Staff for its efforts during this crisis.

Councilmember James spoke to the importance of the community working together during this difficult time; thanked City Staff for its efforts.

Mayor Pro Tem Ferguson thanked residents for their patience and support for one another during this difficult time; noted that those members of the community that wish to volunteer to help the elderly should call (949) 361-8200.

12. **RESOLUTIONS/ORDINANCES**

None.

13. **ADJOURNMENT**

MOTION BY COUNCILMEMBER JAMES, SECOND BY MAYOR PRO TEM FERGUSON, CARRIED 5-0, to adjourn at 7:35 p.m. The next Regular Council Meeting will be held on April 7, 2020 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.

CITY CLERK of the City of
San Clemente, California

MAYOR of the City of
San Clemente, California