

# CITY OF SAN CLEMENTE

## City Council Minutes

### Regular Meeting – September 15, 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 Regular San Clemente City Council meeting was called to order on September 15, 2020 at 5:04 p.m. by Mayor Pro Tem Ferguson. The meeting was conducted via teleconference.

**PRESENT** HAMM, JAMES, WARD, MAYOR PRO TEM FERGUSON

**ABSENT** NONE

**STAFF PRESENT** Erik Sund, Interim City Manager; Scott Smith, City Attorney; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk

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#### **CLOSED SESSION**

City Attorney Smith announced that one of the cases agendized under Closed Session Item D (Initiation of Litigation) relates to possible acquisition of the San Clemente Hospital site, noting that the settlement that allows this topic to be discussed was attached to the agenda; noted that the other case involving Closed Session Item D relates to pre-filing negotiations and settlement discussions with potential defendants, which excuse the City from further announcements on this matter at this time.

MOTION BY COUNCILMEMBER JAMES, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to recess to Closed Session at 5:05 p.m. to discuss the following:

#### **A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Pursuant to Government Code section 54956.8

Number of items: 2

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: Consideration of Proposals for Interim or Long Term Acquisition or Lease

*Closed Session continued on following page*

Property: 380 E. Avenida Pico  
Agency Negotiator: Acting City Manager and City Attorney  
Negotiating Parties: City of San Clemente and Rachael Davidson, Project Manager, Jacobs Telecommunications on behalf of Verizon Wireless and/or their authorized agent(s)  
Under Negotiation: Price and Terms for Lease

**B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**

Existing litigation pursuant to Government Code section 54956.9(d)(1)  
Number of Cases: 2

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: City of San Clemente v. Emergency Shelter Coalition, et al.  
Case Number: 2020-01153535-CU-EI-CXC

**C. 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

**D. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**

Initiation of litigation pursuant to Government Code section 54956.9(d)(4)  
Number of potential cases: 2

**BUSINESS MEETING CONVENED**

The Regular Business Meeting convened at 6:01 p.m., with all members participating via teleconference.

**PLEDGE OF ALLEGIANCE**

Councilmember James led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

**Proclamation - Constitution Week**

Mayor Pro Tem Ferguson read a Proclamation setting apart September 17, 2020 through September 23, 2020 as Constitution Week.

A. **Toll Road Update**

Interim City Manager Sund reported that the newly reactivated Toll Road Subcommittee, which consists of Councilmembers James and Ward, will meet next week; reviewed issues that the Subcommittee will consider.

Councilmember Ward reported that both Transportation Corridor Agency Boards discussed the Grand Jury Report; voiced concern that the Boards attacked the City for retaining traffic consultants and attempting to educate its citizenry on the toll road proposal through San Clemente.

Councilmember James expressed his disappointment with regard to the TCA's attacks against the City, its residents, and the Grand Jury; noted that the Grand Jury pointed out improprieties by one TCA Board Member and stressed the importance of that person being identified.

B. **Monthly Financial Report – August 2020**

Interim City Manager Sund explained the reasons that the August 2020 Monthly Financial Report identifies expenditures from the beginning of the fiscal year to date, but does not yet reflect revenues.

Financial Services Officer Rahn reviewed the August 2020 Monthly Financial Report which is on file with the City Clerk; stated that the City's largest revenue sources for the General Fund (i.e., sales and property taxes) are meeting projected levels.

In response to Council inquiry, Staff noted the difficulty of providing a realistic comparison of the prior fiscal year's expenditures and revenues to the current fiscal year's figures at this point in time; noted that the data will be provided as soon as meaningful and accurate comparisons can be made, noting that that will likely coincide with Staff's quarterly financial reports.

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

City Clerk staff read the following emails, which are on file with the City Clerk:

Steven Marshall, email dated September 11, 2020, concerning Mayor Pro Tem Ferguson's disclosure of a potential lawsuit.

Joe Janis, on behalf of the T-Street Neighborhood Watch Group, email dated September 14, 2020, concerning a petition to change the operating hours of City beaches.

Jeremy Navarro, email dated September 15, 2020, regarding Proposition 16.

Alan Hostetter, email dated September 15, 2020, regarding the State's response to the COVID-19 pandemic.

Donna Vidrine, email dated September 15, 2020, concerning an increase in City-related lawsuits and attorney fees.

Chris Herron, email dated September 15, 2020, concerning the fire risk associated with homeless encampments in hillsides.

Warren Vidrine, email dated September 15, 2020, concerning the need for transitional housing for homeless individuals.

3. MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER JAMES, 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**

**Closed Session Item D (Conference with Legal Counsel – Anticipated Litigation) – 715 Avenida Columbo**

City Attorney Smith reported that during this evening's Closed Session, Council took the following reportable action with regard to Closed Session Item D (Conference with Legal Counsel – Anticipated Litigation):

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER JAMES, CARRIED 4-0, to initiate nuisance abatement proceedings concerning the real property located at 715 Avenida Columbo.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM FERGUSON, CARRIED 4-0, to approve the Consent Calendar, with the removal of Items 6A(2), D, G and I.

A. **City Council Minutes**

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

1. Regular City Council Meeting Minutes of August 18, 2020.
3. Adjourned Regular Joint Council/Planning Commission Meeting Minutes of September 2, 2020.

B. **Commission/Committee Minutes**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 4-0, to receive and file:

- (1) Coastal Advisory Committee Regular Meeting Minutes of December 12, 2019.
- (2) Coastal Advisory Committee Regular Meeting Minutes of January 9, 2020.
- (3) Coastal Advisory Committee Regular Meeting Minutes of February 13, 2020.
- (4) Golf Course Committee Regular Meeting Minutes of August 6, 2020.
- (5) Beaches, Parks and Recreation Commission Regular Meeting Minutes of August 11, 2020.

C. **Orange County Operational Area Agreement**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM FERGUSON, CARRIED 4-0, to approve, and authorize the Mayor to execute, the Orange County Operational Area (OA) Agreement (Contract C20-57), of the County of Orange and its Political Subdivisions.

E. **Contract Award – Design and Construction Support for the Replacement of the Mariposa Beach Trail Bridge**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM FERGUSON, CARRIED 4-0, to approve, and authorize the Public Works Director/City Engineer to execute, Contract C20-52, by and between the City of San Clemente and KPFF, providing for design and construction support services for the Mariposa Beach Trail Bridge Replacement Project (Project No. 11810), in the amount of \$327,000.

F. **Contract Award – Citywide Culverts Structural Assessment**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM FERGUSON, CARRIED 4-0, to approve, and authorize the Public Works Director/City Engineer to execute, Contract C20-53, by and between the City of San Clemente and TranSystems, providing for design services of the Citywide Culverts Structural Assessment (Project No. 20002), in the amount of \$131,870.

H. **Golf Course Committee FY 2020-21 Annual Work Plan**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM FERGUSON, CARRIED 4-0, to approve the Golf Course Committee FY 2020-21 Work Plan.

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

6A(2). **Regular City Council Meeting Minutes of September 1, 2020**

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD to approve the Regular City Council Meeting Minutes of September 1, 2020.

SUBSTITUTE MOTION BY MAYOR PRO TEM FERGUSON to revise the Regular City Council Meeting Minutes of September 1, 2020, to include her announcement concerning a letter received from former City Manager James Makshanoff's attorney relative to his assertion of wrongful termination and other allegations. **The substitute motion died for lack of a second.**

THE ORIGINAL MOTION WAS VOTED ON AND CARRIED 3-1 (MAYOR PRO TEM FERGUSON VOTING NOE).

D. **Conversion of Parking Restriction to Parking Prohibition on North End of Avenida San Pablo**

Councilmember James announced that he would recuse himself from deliberations on this item because he resides within 300 feet of the project in question; left the meeting at 6:46 p.m.

City Clerk staff read the following email, which is on file with the City Clerk:

Steven Marshall, email dated September 15, 2020.

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM FERGUSON, CARRIED 3-0-1 (COUNCILMEMBER JAMES RECUSING), to:

1. Prohibit parking on the west side of Avenida San Pablo from the cul-de-sac tangent southerly for a distance of 1,120 feet, along the cul-de-sac to Avenida Acapulco, and on the east side of Avenida San Pablo from the beginning of the curb return at Avenida Acapulco southerly for a distance of 350 feet.
2. Adopt Resolution No. 20-53 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MASTER TRAFFIC RESOLUTION NO. 1846, ESTABLISHING 'NO PARKING AREAS' ON AVENIDA SAN PABLO.

Councilmember James re-joined the meeting at 6:49 p.m.

G. **Human Affairs Committee FY 2020-21 Annual Work Plan**

Council noted that the Human Affairs Committee was created for the purpose of serving as a catalyst in the assessment of human needs and issues in the City by tracking trends, clarifying needs, and identifying resources; discussed the possibility of the Human Affairs Committee amending its work plan to better coincide with its original purpose and to avoid duplication with work being done by other agencies in the County; noted the benefits of the Human Affairs Committee working with service providers in conducting forums and other outreach efforts to educate the public with regard to available resources.

Following discussion, MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER JAMES, CARRIED 4-0, to continue consideration of the Human Affairs Committee's FY 2020-21 Annual Work Plan to the Regular Council Meeting of October 6, 2020 to enable the Human Affairs Committee to provide input on possible changes to its Annual Work Plan.

I. **Temporary Strategies Related to Novel Coronavirus Regarding Evening Ballfield and Tennis Court Operations and Allowing Commercial, Religious and Cultural Gatherings in Public Open Space**

In response to Council inquiry, Recreation Manager Wylie explained as follows:

- 1) Staff recommends that tennis court lighting extend to 8:00 p.m., as opposed to 10:00 p.m. as requested by some members of the tennis community, and explained the rationale therefor. It was agreed that Council will refer members of the public interested in this topic to Recreation Manager Wylie so that she can explain Staff's position on the lighting matter and to ensure that Staff remains aware of the public's sentiments on the lighting issue and conditions which may warrant a change to Staff's position in the future.
- 2) It is the intent of the proposed Resolution to limit eligibility for use of public open spaces in the City during the local emergency to current brick-and-mortar commercial operations that have business licenses in the City and religious organizations that are currently operating in the City of San Clemente.

Following discussion, MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 3-1 (MAYOR PRO TEM FERGUSON VOTING NOE), to adopt Resolution No. 20-54, entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DIRECTING THE DIRECTOR OF EMERGENCY SERVICES TO IMPLEMENT CERTAIN METHODS TO SUPPORT RELIGIOUS AND CULTURAL GATHERINGS WITHIN THE CITY OF SAN CLEMENTE AND COMMERCIAL USE WITHIN THE CITY OF SAN CLEMENTE IN PUBLIC OPEN SPACE AND EVENING PLAY AT BALLFIELDS AND TENNIS COURTS, with the following modifications:

Sections 1 and 2 were expanded to read in their entirety as follows:

**Section 1.** Use of Public Parks, Beaches, and Trails Space by Places of Worship and Providers of Religious Services and Cultural Ceremonies.

For the duration of this local emergency, the City Council hereby authorizes and directs the Director of Emergency Services to implement a program allowing **City of San Clemente** places of worship and providers of religious services and cultural ceremonies (collectively "Places of Worship") to temporarily operate outdoors within city parks, beaches, and trails, or where appropriate. Places of Worship shall conduct outdoor operations with CDHP COVID-19 Industry Guidance applicable to Places of Worship and Providers of Religious Services and Cultural Ceremonies.

*Action continued on next page*

**Section 2. Use of Public Parks, Beaches and Trails Space for Commercial Business Operations.**

For the duration of this local emergency, the City Council hereby authorizes and directs the Director of Emergency Services to implement a program allowing ***City of San Clemente*** temporary outdoor business operations within city parks, beaches, and trails, or where appropriate.

*\*Added verbiage is identified in bold and italicized type.*

7. **PUBLIC HEARINGS**

None.

8. **UNFINISHED BUSINESS**

A. **Temporary Outdoor Operations: Implementation Standards**

Report from the Interim City Manager concerning implementation standards for temporary outdoor dining operations.

Economic Development Officer Lightfoot narrated a PowerPoint presentation entitled "Temporary Outdoor Operations: Implementation Standards" and responded to Council inquiries. A hard copy of the PowerPoint presentation, dated September 15, 2020, is on file with the City Clerk.

City Clerk staff read the following emails, which are on file with the City Clerk:

Sarah Resendiz, Owner of Tamarindo, email dated September 14, 2020.  
Nicholas Cordato, Artifex, email dated September 15, 2020.  
Larry Culbertson, San Clemente Historical Society, email dated September 15, 2020.

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

1. Approve the design standards for outdoor operations spaces.
2. Allow the use of "landmarks" bulb-outs on Avenida Del Mar and direct Staff to work with business owners that will utilize that space to ensure that the tiles will not be damaged during that use.
3. Create additional parking along Avenida Del Mar for bicycles as well as additional bulk bicycle parking on Ola Vista.

*Action continued on next page*

- 4. Allow for the use of alleyways off Avenida Del Mar between the hours of 4:00 p.m. to 9:00 p.m. Friday through Sunday, and holidays, if there are no issues with deliveries or CR&R trash service.
- 5. Direct Staff to return to Council with options for bulb-outs on El Camino Real to allow for potential expansion of businesses.
- 6. Direct Staff to return to Council with potential security features for alleyways.

9. **NEW BUSINESS**

A. **Warrant Register**

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

Approve Wire Transfers Nos. 2298 through 2305, and Warrant Nos. 569006 through 569125, paid on 9/4/20, in the amount of.....\$ 6,836,436.19

TOTAL WARRANT REGISTER.....\$ 6,836,436.19

**Payroll Register**

None.

A. **El Camino Real/Esplanade Intersection Safety Improvement**

Report from the Public Works Director/City Engineer concerning El Camino Real/Esplanade Intersection Safety Improvement.

Public Works Director/City Engineer Bonigut reviewed the contents of the Administrative Report and responded to Council inquiries; advised that Staff is recommending that Council approve Alternative 2 (addition of delineators along the El Camino Real centerline at Esplanade), however, most neighbors favor Alternative 1 (addition of left-turn pockets on El Camino Real at Esplanade).

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

1. Approve the addition of left-turn pockets on El Camino Real at Esplanade (described as Alternative 1 in the Administrative Report, dated September 15, 2020).
2. Adopt Resolution No. 20-58 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MASTER TRAFFIC RESOLUTION NO. 1846, ESTABLISHING 'NO PARKING AREAS' ON AVENIDA SANTIAGO.

C. **Request for Audit of Legal Bills**

Report from the Interim City Manager concerning Council's request for an audit of legal bills.

City Attorney Smith recused himself from this portion of the meeting because his firm has a financial interest in the issue under consideration; left the meeting at 8:09 p.m.

City Clerk staff read the following email, which is on file with the City Clerk:

Chris Duncan, email dated September 15, 2020.

Interim City Manager Sund reviewed the contents of the Administrative Report and responded to Council inquiries.

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER HAMM, CARRIED 3-1 (MAYOR PRO TEM FERGUSON VOTING NOE), to establish a subcommittee, consisting of Councilmembers James and Ward, to solicit and review proposals from Deloitte Legal Management Consulting, Management Partners, and RSG, for the audit of legal bills from Best Best & Krieger (BBK).

City Attorney Smith re-joined the meeting at 8:28 p.m.

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

City Clerk staff read the following emails, which are on file with the City Clerk:

Debbie Zonos, email dated September 15, 2020, recommending adoption of an Ordinance to govern the operation of ebikes.

Rick Loeffler, email dated September 15, 2020, urging that the possibility of establishing a City-wide smoking ban be agendized.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

**Ebike Educational Program**

Interim City Manager Sund reported that San Clemente Police Services, led by Lt. Manhart, is developing a program to educate the public on the usage of ebikes.

**Beach Parking Impact Fee (BPIF) Refunds**

In response to Council inquiry, Interim City Manager Sund provided an update on the issuance of Beach Parking Impact Fee (BPIF) refunds to eligible property owners; reported that information concerning properties for which BPIF refunds are available, and the process to claim refunds, are posted on the City's website.

C. **City Attorney**

None.

D. **Council Members**

**Golf Cart Use on Public Streets**

Council requested that San Clemente Police Services develop a program to educate the public concerning the operation of golf carts on public streets. The program is to address underage drivers, requirements, and penalties for violations.

**Report Relating to Confidential Records**

Councilmember Ward, with the support of Councilmember Hamm, requested that Staff provide a report for a future Closed Session that addresses issues with regard to confidential records and circumstances in which confidential records may be disclosed to Councilmembers and the public.

**Letter from Orange County Mayors Concerning Regional Housing Needs Assessment (RHNA) Allocations**

Mayor Pro Tem Ferguson, with the support of Councilmember Hamm, requested that an item be agendaized for the October 6, 2020 City Council meeting to enable Council to consider authorizing the Mayor Pro Tem to execute a joint letter from Orange County Mayors objecting to the Regional Housing Needs Assessment (RHNA) allocations.

**Expression of Gratitude to Staff**

Councilmember Hamm thanked Staff for its efforts during the COVID-19 pandemic.

**Trakit Presentation Concerning Possible Electronic Processing of Plans**

Councilmember James, with the support of Councilmembers Hamm and Ward, requested that the October 6, 2020 Council meeting agenda include a presentation from Information Technology and Community Development regarding the possibility of enhancing the City's Trakit program to provide for the electronic processing of plans and issuance of permits.

**Flock License Plate Readers**

Council requested a white paper concerning the Flock license plate reader system.

**Beach Hours**

Councilmember James, with the support of Councilmembers Hamm and Ward, directed that Staff prepare a white paper on beach hours.

12. **RESOLUTIONS/ORDINANCES**

A. **Ordinance No. 1704 (Second Reading) – Massage Establishments**

MOTION BY COUNCILMEMBER HAMM, SECOND BY MAYOR PRO TEM FERGUSON, CARRIED 4-0, to adopt Ordinance No. 1704 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTER 17.28.185 OF THE SAN CLEMENTE MUNICIPAL CODE (RELATING TO MASSAGE ESTABLISHMENTS) AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

13. **ADJOURNMENT**

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER JAMES, CARRIED 4-0, to adjourn at 8:52 p.m. The next Regular Council Meeting is scheduled to take place on October 6, 2020. Closed Session items will be considered at 5:00 p.m. and the Regular Business Meeting will commence at 6:00 p.m. The meeting will take place via teleconference.

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CITY CLERK of the City of  
San Clemente, California

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MAYOR PRO TEM of the City of  
San Clemente, California