

**RESOLUTION NO. 20-63**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
SAN CLEMENTE, CALIFORNIA, CENSURING MAYOR  
PRO TEM LAURA FERGUSON FOR UNACCEPTABLE  
CONDUCT**

**WHEREAS**, the City Council of the City of San Clemente has a duty to the residents of San Clemente and to the San Clemente employees to ensure that the laws of the State of California and the City of San Clemente, and the rules, regulations and policies of the City of San Clemente are followed by all members of the City Council, and that members of the City Council demonstrate the highest level of professionalism and respect while acting in the course and scope of their office; and

**WHEREAS**, complaints were made by another member of the City Council that Mayor Pro Tem Laura Ferguson ("Mayor Pro Tem Ferguson") has demonstrated a pattern of disregard for the laws and policies that apply to and govern City business; and

**WHEREAS**, on November 23, 2020, pursuant to notice duly given to Mayor Pro Tem Ferguson, the San Clemente City Council conducted a hearing regarding a possible censure of Mayor Pro Tem Ferguson for such violation of laws and policies; and

**WHEREAS**, at such hearing, the City Council duly considered the evidence and comments presented by members of the Council, the comments and response by Mayor Pro Tem Ferguson, and comments by the public, and

**WHEREAS**, Mayor Pro Tem Ferguson's violation of laws and policies, as more particularly set forth below, has brought disrepute to the City of San Clemente, caused embarrassment and humiliation to current and former City employees, jeopardized the City's position with respect to threatened and pending claims and litigation, and created a risk of exposure to liability for unfair labor practices; and

**WHEREAS**, the City Council does not condone or approve this type of conduct and behavior and finds it necessary and prudent to declare its strong disapproval of such conduct; and

**WHEREAS**, the City Council further determines that adoption of this Resolution is necessary to affirm that such conduct will not be tolerated and prevent such conduct from being repeated.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the City Council of the City of San Clemente, California, as follows:

**Section 1.** The City Council finds that the Recitals set forth above are true and correct.

**Section 2.** The City Council finds that Mayor Pro Tem Ferguson engaged in the following conduct in violation of State law, the San Clemente Municipal Code, and San Clemente City Council Policy No. 1201-11, dated May 19, 2020:<sup>1</sup>

A. Mayor Pro Tem Ferguson interfered with the powers and duties of the City Manager as the administrative head the City and responsible for the efficient administration of all the affairs of the City, as set forth in San Clemente Municipal Code, Chapter 2.08, Section 2.08.080 by, among other things:

1. Suggesting to the City Manager that the public contract with Rod's Tree Service for tree trimming continue in effect after the City Council decided not to renew or extend it.

Finding of Fact:

- Exhibit A1<sup>2</sup> correspondence to Erik Sund dated September 20, 2020 only<sup>3</sup> (excluding "Subject: Fwd: Reverse course immediately," which was generated by third party, and excluding attachments from third party in original).

B. Mayor Pro Tem Ferguson interfered with the exclusive duties and responsibilities of the City Manager as set forth in the San Clemente Municipal Code, Chapter 2.08, Section 2.08.090 relating to the appointment and supervision of public employees by, among other things:

2. Publicly criticizing the Assistant City Manager who reports to the City Manager and accusing him of falsely impersonating a City Council member.

Finding of Fact:

- Exhibit B2, to show May 28, 2019 publication of criticism and accusation of Assistant City Manager outside chain of command disciplinary proceedings (excluding criticism of City Manager Makshanoff and correspondence to him dated May 27, 2019).

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<sup>1</sup> Some sub-section letters and/or sub-section numbers are intentionally omitted.

<sup>2</sup> Exhibits are excerpted from "Documents from Councilmember Ward which will be referenced at the November 23, 2020 Council meeting" available at <https://www.san-clemente.org/government/city-council/packets/-folder-9498>, or directly at <https://www.san-clemente.org/Home/ShowDocument?id=60657>.

<sup>3</sup> Specific text forming the basis for each Finding of Fact is identified with text boxes in each exhibit.

D. Mayor Pro Tem Ferguson interfered with the City's duty to cooperate with the California Joint Powers Insurance Authority ("CJPIA") in connection with personnel claims made against the City and tendered to the CJPIA, thereby jeopardizing the City's coverage by, among other things:

1. Publishing (not releasing upon request) information regarding a claim made by the former City Manager.

Findings of Fact:

- Public announcement at City Council meeting.
- Exhibit D1 (September 4, 2020 publication, excluding letter to editor and related correspondence).
- Council's understanding of CJPIA's memorandum of coverage.

2. Making direct contact with opposing counsel in pending litigation for which the CJPIA was providing a defense on behalf of the City.

Findings of Fact:

- Exhibit D2 letter to Council and staff.
- Council's understanding of CJPIA's memorandum of coverage.

E. Mayor Pro Tem Ferguson attempted to direct the conduct of the City Manager, without the authority of the City Council, and, thereafter, made complaints of employee insubordination by the City Manager to the City's Human Resources Manager outside the City Council evaluation process for his failure to follow Mayor Pro Tem Ferguson's direction. Mayor Pro Tem Ferguson knows, or should know, that the Human Resources Manager has no authority with respect to performance of the City Manager, who reports directly to the City Council.

Finding of Fact:

- Exhibit E (excluding input to City Manager re: timing and substance of agenda item; including unilateral directive to Human Resources).

F. Mayor Pro Tem Ferguson engaged in public criticism of the City Manager regarding a lawful activity in an effort to embarrass and humiliate him, rather than utilize appropriate procedures to address perceived performance issues that are designed to protect the due process rights of public employees. If Mayor Pro Tem Ferguson had a criticism of the City Manager, she should seek an opinion from counsel or staff as to the propriety of the activity and raise that in a closed session to discuss the City Manager's performance. If Mayor Pro Tem Ferguson has a criticism of any other City employee, she should address that directly and confidentially with the City Manager in order to protect that employee's privacy rights and avoid a hostile workplace environment.

Finding of Fact:

- Exhibit F5 (correspondence dated November 18, 2019).

H. Mayor Pro Tem Ferguson publicly questioned the endorsement of a political candidate by represented City employees, thereby risking the City's compliance with its labor relations obligations under the Meyers-Milias-Brown Act ("MMBA"). Such action required the City Attorney to send correspondence to the Orange County Employees Association ("OCEA") to the OCEA and the San Clemente City Employees Association that the City of San Clemente respects the rights of its employees to organize and endorse candidates, that Mayor Pro Tem Ferguson's act was not an official act of the City, and that the City is committed to compliance with the MMBA.

Finding of Fact:

- Exhibit H (communication to Association members outside Meyers-Milias-Brown Act channels and meet and confer process, excluding communication with constituents)

I. Mayor Pro Tem Ferguson disclosed information to the media regarding a public opinion poll that was protected from disclosure by the City Council's deliberative process privilege and attorney work product without authority of the majority of council. Mayor Pro Tem Ferguson was aware of the City Council's desire to maintain the confidentiality of this information, but nevertheless, made a unilateral decision to disclose it.

Finding of Fact:

- Exhibit I (release of homeless poll data to *San Clemente Times* during pendency of homelessness litigation and settlement discussions)

J. Mayor Pro Tem Ferguson directed that items be added to the City Council Agenda over the City Manager's objection in violation of City Council Policy No. 1201-11, dated May 19, 2020, that requires that there be concurrence ("in conference") of City Manager for agenda items.

Findings of Fact:

- Council Policy 1201-11
- Exhibit J (October 6, 2020 correspondence)

**Section 3:** The City Council finds that this conduct, in addition to being improper, unprofessional and unacceptable, Mayor Pro Tem Ferguson was acting solely as an individual, without any authorization or ratification by the City Council and contrary to the legitimate interests of the City.

**Section 4:** The City Council hereby censures Mayor Pro Tem Ferguson for the conduct described herein and expresses the strongest possible disapproval and disavowal thereof.

**Section 5:** The City Council regards Mayor Pro Tem Ferguson's behavior, except while sitting with and as a member of the City Council, to be outside the course and scope of her performance as a member of the City Council.

**Section 6:** The City Council declares that Mayor Pro Tem Ferguson is not authorized by this City Council to represent, take action, or speak for or on behalf of the City Council under any circumstances or with any person, agency, or entity, including but not limited to employees of the City with respect to any matter which she otherwise represents to be the official position of the City Council, where a majority of the City Council has not otherwise taken an official position on such matter or matters.

**Section 7:** The City Council respectfully but earnestly requests and expects Mayor Pro Tem Ferguson to cease and desist from any improper and unprofessional conduct toward employees of the City. If Mayor Pro Tem Ferguson has any concern regarding the performance of the City Manager, she is expected to address such concerns privately with the City Manager or in a closed session convened to address the City Manager's performance. If Mayor Pro Tem Ferguson has any concern regarding the performance of any other City employee, she is expected to address such concerns privately with the City Manager.

**Section 8:** The City Manager is hereby directed to immediately notify the City Council if Mayor Pro Tem Ferguson engages in future conduct that is proscribed by this resolution.

**Section 9:** It is the intent of the City Council, in the event of future improper and unprofessional conduct by Mayor Pro Tem Ferguson in violation of the terms of this Resolution, to pursue any and all legal remedies available by law to prohibit such conduct.

PASSED, APPROVED, AND ADOPTED this 23<sup>rd</sup> day of November, 2020.

---

MAYOR PRO TEM of the  
City of San Clemente, California

ATTEST:

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CITY CLERK of the City of  
San Clemente, California

STATE OF CALIFORNIA )  
COUNTY OF ORANGE )  
CITY OF SAN CLEMENTE )

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 20-63 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 23<sup>rd</sup> day of November, 2020, by the following vote:

AYES:                   HAMM, JAMES, WARD

NOES:                   FERGUSON

ABSENT:                NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

\_\_\_\_\_  
City Attorney

Exhibit A1

**From:** Ferguson, Laura  
**Sent:** Sunday, September 20, 2020 10:08 AM  
**To:** Sund, Erik <SundE@san-clemente.org>  
**Cc:** Ferencz, Veronica <FerenczV@san-clemente.org>  
**Subject:** RE: Reverse course immediately.

Dear Erik,

As you saw in my response to a resident email on Friday, September 18th, your decision to send Rod's Tree Service a letter to vacate in 14 days came as a complete surprise to me. I can only imagine the tough spot this places Rod's Tree Service, and the city, as we will be left without tree maintenance services. Why did you do this without communicating your intentions with city council? The tree maintenance services contract is a very public matter and your decision to a) send this letter with a short, unrealistic 14-day window of time for Rod's to vacate the city property at Steed Park and secure an alternative site for their equipment; and, b) leave city council in the dark on your actions is extremely concerning.

Understandably, this has been playing out on social media, placing the city in a negative light, once again. To extend the professional courtesy that Rod's Tree Service deserves after 40-plus years serving San Clemente as the city's tree maintenance vendor, please call Rod's first thing Monday morning and have a conversation with them and ask them how much time they need to search for a new site, sign a lease and relocate their equipment. Again, 14 days is woefully inadequate and I would like to understand your motivation for doing this, especially considering city council has not yet made a decision on awarding the tree maintenance services contract. And, what's the rush? Is there some urgent need I am unaware of to reclaim this portion of city



property at Steed Park? Further, please send me and my fellow city council members the following:

1. *A copy of this letter to vacate that you authorized be sent to Rod's Tree Service.*
2. *A response to my request at the September 1, 2020 council meeting to have staff look into and validate or invalidate the information shared by residents under public comments regarding a competing contract bidder over safety, accidents, or lawsuits and whether you had a professional relationship with any of the bidders while employed with the City of Long Beach.*
3. *Your plan to ensure continuity of tree maintenance services after Rod's Tree Service and before city council makes its final decision on the contract award.*

I look forward you making a conscious effort to turn this bad situation around. Thank you.

Best,

Laura Ferguson  
Mayor Pro Tem

Exhibit B2



Laura Ferguson, City Councilwoman

Like




Laura Ferguson, City Councilwoman



May 28, 2019 · 🌐

I gave the City Manager 24 hours to respond to my email concerns. He has been in the office all day today and yet has ignored this serious complaint of mine regarding his direct report, the Assistant City Manager Erik Sund. Ignoring a city councilmember complaint that his staffer impersonated a councilmember is irresponsible for a leader of our city organization. Staff was not elected to represent the people.


Exhibit D1

 **Laura Ferguson, City Councilwoman**

 Like





Laura Ferguson was elected at large to San Clemente City Council on November 6, 2018 to serve a four-year term.:


 766 people like this including 3 of your friends



 882 people follow this

 <http://lauraferguson4sc.com/index.html>

 [ferguson4council@gmail.com](mailto:ferguson4council@gmail.com)

 Community - Public & Government Service

### Suggest Edits

Does this Page have a phone number?

Yes

Unsure

No

### Photos

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
 **Laura Ferguson, City Councilwoman** ...  
September 4 · 



SANCLEMENTETIMES.COM  
**City Facing Potential Suit from Former City Manager | San Clemente Times**

  15

21 Comments 1 Share

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


 Comment

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Most Relevant ▾



Write a comment...



**Kim Colleen Bengard**

The city manager who ordered the filling of the skate park? The city manager who ordered the beach parking closed? The one who alienated OCSD? Horrible and costly decisions all. He should be held accountable.

Like Reply 10m

 2



**Vickie McMurchie**

Kim not the same City Manager...



Laura Ferguson, City Councilwoman

Like



Amanda Quin

Laura Ferguson, City Councilwoman you still divulge closed session information. You say that you "followed former mayor Dan Bane's lead/advice," by why don't you accept the City's Attorney's advice? You disclosed confidential information from a pending lawsuit.

Like Reply



Joan Kanipe

Amanda Quin All lawsuits should be disclosed. We the taxpayers are paying the bills. Our services are being cut back because of these lawsuits!

Like Reply



Becky Nelson

Joan Kanipe you mean the lawsuits that Laura is causing and encouraging ( on this very post?) Let me ask you, if holding off on blabbing about the lawsuit for a month saved our city millions in tax payer money, wouldn't you agree that there is an appropriate time and way to share this information with the public?

Like Reply



Amanda Quin

Joan Kanipe don't you know what attorney/client privilege means? Why didn't she follow attorney advice?

Like Reply



Reply to Laura Ferguson, City Councilwoman. ...



Author

Laura Ferguson, City Councilwoman

There is no attorney-client privilege or confidentiality in the letter which I announced. Confirmed by the CJPIA attorney who is hired to defend and indemnify the city.

Like Reply



Becky Nelson

Brad must be busy these days. It took a while for Laura to respond

Exhibit D2

Subject: Re: Confidential Personnel Claim on 9-17-19 Closed Session Agenda - Councilwoman Ferguson Input

CAUTION - EXTERNAL SENDER.

Please substitute this revised email into closed session. Please also ensure BB&K Attorney Joe Ortiz receives. His email bounced back earlier.



Scott Smith  
Partner  
scott.smith@bbklaw.com  
T: (949) 263-6561 C: (949) 929-0664  
[www.BBKlaw.com](http://www.BBKlaw.com)

> On Sep 13, 2019, at 1:35 PM, Ferguson, Laura <FergusonL@san-clemente.org> wrote:

>> Dear City Attorney, BBK Labor Attorney, City Manager, Assistant City Manager and Councilmembers,

>> In light of the response [REDACTED] and the fact that I have a preplanned vacation, which will prevent me from attending the next council meeting, I am providing my input for the closed session [REDACTED]

>> I emailed city attorney Scott Smith in the evening on September 9 asking if we had received a response from [REDACTED] Attorney and not having received a timely reply, the next afternoon I contacted [REDACTED] attorney, asking two follow up

>> questions: 1) [REDACTED] and 2) [REDACTED]

[REDACTED] I told her [REDACTED]  
I asked her [REDACTED]

[REDACTED] I reached out to the attorney asking if I could sit in on the interview with [REDACTED]





>>

>> Best,

>>

>> Laura Ferguson

>> Councilwoman

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.

Exhibit E

---

**From:** Ferguson, Laura  
**Sent:** Saturday, June 13, 2020 11:04 AM  
**To:** Sund, Erik <[SundE@san-clemente.org](mailto:SundE@san-clemente.org)>; Dunek, Robert <[DunekR@san-clemente.org](mailto:DunekR@san-clemente.org)>  
**Cc:** Lowe, Heather <[LoweH@san-clemente.org](mailto:LoweH@san-clemente.org)>; Ferencz, Veronica <[FerenczV@san-clemente.org](mailto:FerenczV@san-clemente.org)>  
**Subject:** Acts of Insubordination

Erik and Bob,

Please respond to my email below. Only City Net contract was addressed on the agenda.

Also, why was there no response from you to my prior email on opening up council meetings to the public? Why do you continue to ignore many of my emails? These meetings must be opened up. Ignoring council emails is a violation of the city policy covering staff-council communications. Not including these items in my email below under the mayor-city manager agenda setting is also a violation of policy. I am copying Human Resources to report continued acts of insubordination and purposefully dismissing/ignoring emails from a sitting council member.

I will look forward to one day receiving a reply from the Human Resources manager who has yet to confirm receipt of any of my multiple emails sent to her to date.

Best,  
Laura

Exhibit F5

## Councilmember Ferguson Photos - Council Comments

Campagnolo, Laura <CampagnoloL@san-clemente.org>

Tue 12/3/2019 10:27 AM

To: Bane, Dan <BaneD@san-clemente.org>; Ferguson, Laura <FergusonL@san-clemente.org>; Hamm, Chris <HammC@san-clemente.org>; James, Gene <JamesG@san-clemente.org>; Ward, Kathy <wardk@san-clemente.org>; Makshanoff, James <makshanoff@san-clemente.org>; Sund, Erik <SundE@san-clemente.org>; Baade, Joanne <BaadeJ@san-clemente.org>

■ 1 attachments (492 KB)

Ferguson.pptx;

Councilmember Ferguson will be presenting the attached photos under Councilmember comments at the meeting this evening.

---

Laura Campagnolo | Deputy City Clerk

City of San Clemente

910 Calle Negocio | San Clemente, CA 92673

☎ (949) 361-8301 | 📠 (949) 361-8309 | ✉ [campagnolo@san-clemente.org](mailto:campagnolo@san-clemente.org)

**Re: Follow up on private beach boogie boarding contest on San Clemente public beach**

**Makshanoff, James <makshanoffj@san-clemente.org>**

Mon 11/18/2019 7:41 PM

To: Ferguson, Laura <FergusonL@san-clemente.org>

Cc: gwalkerjames@gmail.com <gwalkerjames@gmail.com>; Ferencz, Veronica <FerenczV@san-clemente.org>

Councilmember Ferguson

There is no permit on file.

James Makshanoff  
City Manager  
San Clemente

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Ferguson, Laura" <FergusonL@san-clemente.org>

Date: 11/18/19 7:20 PM (GMT-08:00)

To: "Makshanoff, James" <makshanoffj@san-clemente.org>

Cc: gwalkerjames@gmail.com, "Ferencz, Veronica" <FerenczV@san-clemente.org>

Subject: Follow up on private beach boogie boarding contest on San Clemente public beach

Dear James,

I'm following up on the information I was provided on the private VIP event on the public beach (and I shared with you) in which city attorney Scott Smith said you confirmed your son participated in (both "A Makshanoff and J Makshanoff" are photographed on the contest heat sheets, and which you told me you had no role in planning.

Please provide me with any special event permit (if it exists), proof of fees paid and proof of insurance for this September 21, 2019 beach boogie boarding private event with 31 people and a state lifeguard truck guarding the event on the public beach. The city attorney indicated he reached out to you to have recreation and code enforcement look into special event permitting. I didn't ask about that. I know the city policy is over 20 people which triggers the requirement to go through the special event permitting process. City employees, including yourself are not above

the rules and we need to make sure that the rules were followed on this and complied with —just as the members of the public need to. It seems the ball has been dropped on this as I haven't received a response yet.

Thank you,  
Laura Ferguson  
Councilwoman

Sent from my iPhone

Ferguson

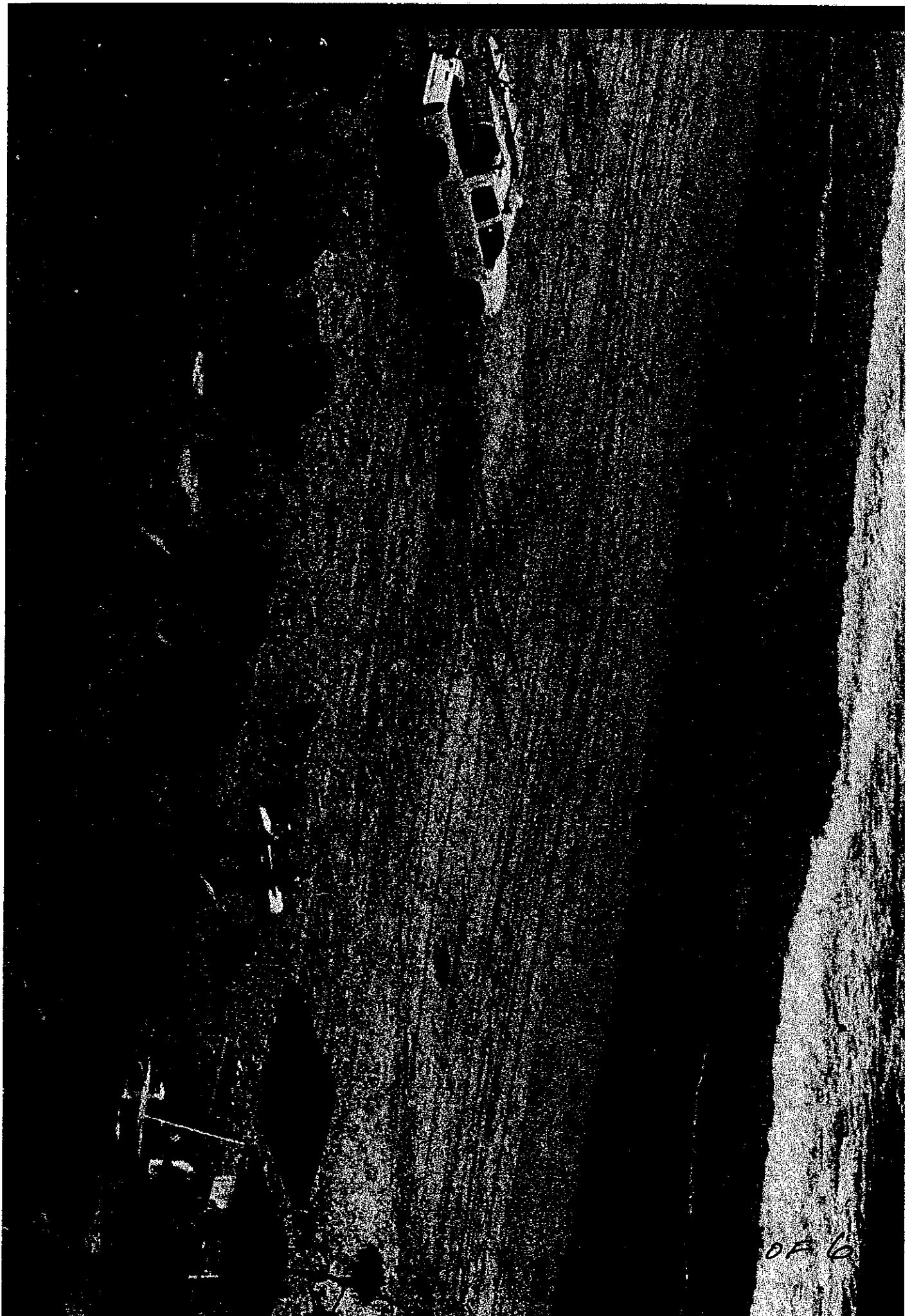
 Start Slide Show

 Print to PDF

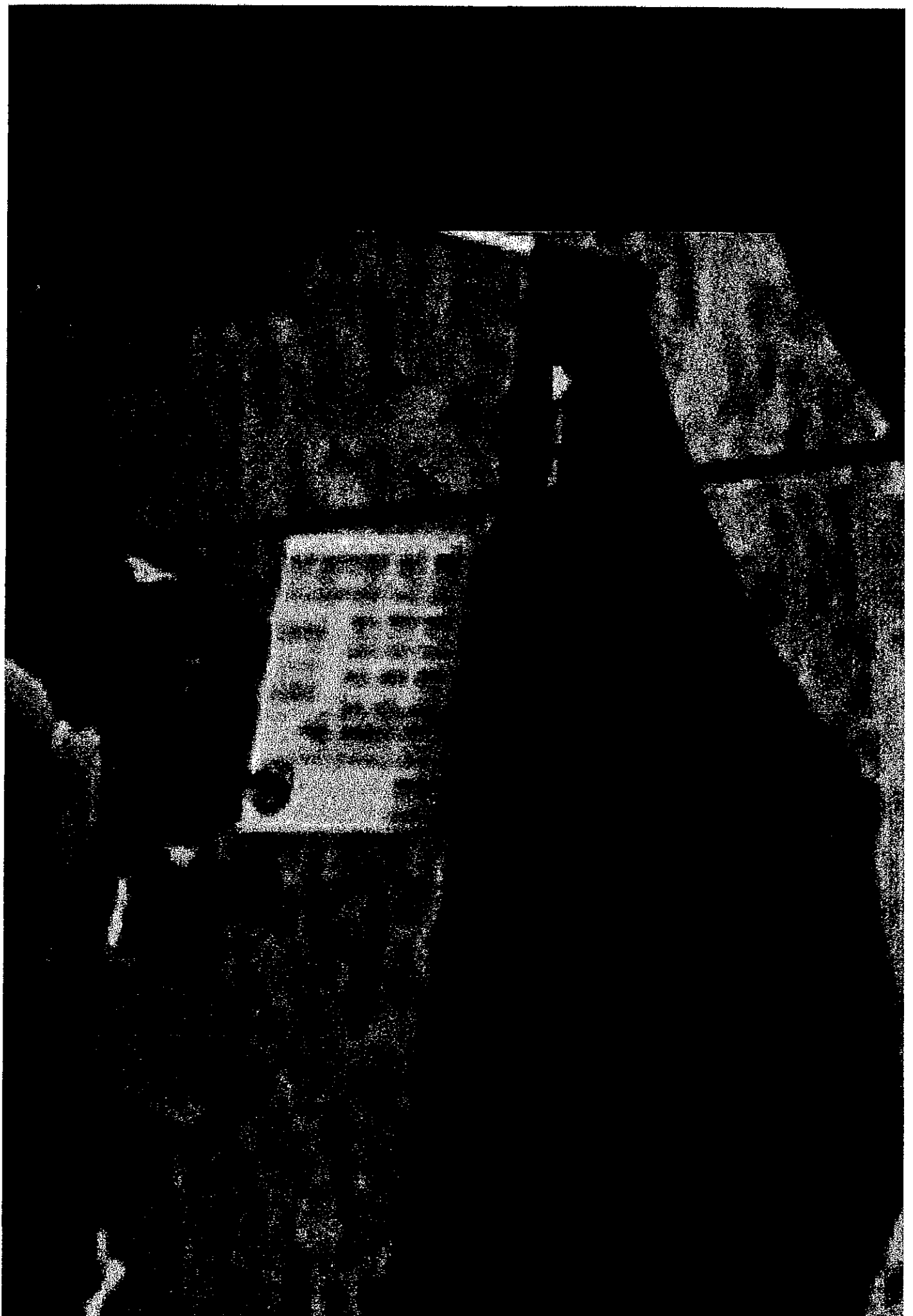
 Comments

 Help









Lawrence				
Moeber				
Sotter				
Pearson				


114

Galagher J				
Knoop				
Makshamoff J				
Morris				
Moore				

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Brower A				
Downer J				
Galagher J				
Makshamoff A				
Pearce A				

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Brower B				
Coffman				
Pearce M				
Swales/Zanni				
Scott				

Rolland				
Moran's 1st				
Moran's 2nd				
Chambers				
Swan's				
Wally Paul				
Swanney Paul				
Wagner Paul				

Exhibit H



February 1, 1998, 6:28 AM

to Markharoff, Sund, Bane

Hi James,

Please find out an answer for Mr. Rubolino in the morning by asking your staffer Kade Bousavane who is president of the SCCEA board. If this in fact happened and the San Clemente employees union endorsed Mr. Hinkle then there should be no reason to hide this.

Also, if the political endorsement meeting took place was it conducted in a city facility at lunchtime (off the clock) or during work time? Were any political candidate materials distributed at this meeting and were those materials prepared and printed on city owned office equipment?

Also, I have been meaning to ask you about how the employee union's board is created ever since Kade and Dan Laury called a meeting with me and Dan Bane not long after we were elected for "what" we still do not know and at the meeting they claimed to not know either and they had the city attorney sitting at the end of the table documenting the conversation. It was the strangest meeting and you never showed up. Such a colossal waste of our time.

Anyhow I'm curious how did the two of them end up as President and Vice President respectively of the employees association/union board? Please send me the bylaws for the employee association. I would like to see how the board members are elected (by members) or appointed (by whom?) to the board that represents the employees.

I'm also curious why the employee association has not endorsed anyone in the past to my knowledge at least in my 18 1/2 years working for the City of San Clemente. Why now?

Thank you very much for your attention to my concerns and the concerns of Mr. Rubolino.

Best,

Laura Ferguson  
Councilmember



## **ORANGE COUNTY EMPLOYEES ASSOCIATION**

830 N. ROSS ST., SANTA ANA, CA 92701 • (714) 835-3355 • (714) 835-7654 FAX • OCEA.ORG

October 25, 2019  
James Makshanoff  
City Manager  
City of San Clemente  
910 Calle Negocio  
San Clemente, CA 92673

Dear Mr. Makshanoff:

My name is Saliem Aregaye and I am a Labor Relations Representative for the Orange County Employees Association (OCEA). I am writing to you on behalf of the San Clemente City Employees Association (SCCEA), which contracts with OCEA for labor relations representation.

As you likely know, SCCEA is a private, non-profit corporation, organized and in good standing under the laws of the State of California.

On or about October 24, 2019, several SCCEA members became aware of a public post on social media consisting of a screenshot of an email sent to you by Councilmember Laura Ferguson. A copy of the screenshot is attached.

The content of Councilmember Ferguson's email is both alarming and inappropriate. Councilmember Ferguson's request for private information about SCCEA and its members - including its governance, bylaws, candidate endorsement process, and specific information targeting the Association President and Vice President - betrays what is apparently her fundamental misunderstanding of the City's rights and obligations (and her rights and obligations as an elected City official) under California public employee labor relations law.

The Councilmember's request has had a distinct chilling effect on SCCEA members. The tone and content of her email has sent a clear message of intimidation to SCCEA, its officers, and members. By that action, and by permitting the email to be published publicly, the Councilmember has likely already committed an unfair practice under the Government Code.

We respectfully request that you address this issue with the Councilmember and that she cease and desist any similar conduct in the future. The Councilmember should clearly understand that any further inappropriate requests, conduct, or other attempts to interfere with, intimidate, restrain, coerce or discriminate against SCCEA, its officers or members will result in the immediate filing of an unfair practice charge with PERB.

James Makshanoff  
October 25, 2019  
Page 2

Thank you for your attention to this serious matter, and please let me know if we can be of any assistance or if you have any questions.  
Sincerely,

ORANGE COUNTY EMPLOYEES ASSOCIATION for the  
SAN CLEMENTE CITY EMPLOYEES ASSOCIATION

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line extending to the right.

Saliem Aregaye  
Labor Relations Representative



**BEST BEST & KRIEGER**  
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(202) 786-0600

**Scott C. Smith**  
(949) 263-6561  
scott.smith@bbklaw.com

November 26, 2019

**VIA U.S. MAIL**

Saliem Aregaye  
Labor Relations Representative  
Orange County Employees Association  
830 N. Ross Street  
Santa Ana, CA 92701

Re: *October 25, 2019 Letter re Councilmember Ferguson's Email  
Concerning the San Clemente City Employees Association*

Dear Ms. Aregaye:

As you may know, this firm serves as City Attorney for the City of San Clemente ("City"). The City Council has asked us to provide this response to your October 25, 2019 letter, on behalf of the San Clemente City Employees Association ("SCCEA"), concerning an email sent and propagated on social media by a San Clemente city councilmember regarding, among other things, SCCEA operations, its leadership and endorsement of political candidates, as well as City staffs' potential use of City resources for political activities.

At the onset, the City reaffirms unequivocally that it respects the rights of its employees to organize and endorse candidates – of their choosing – for political office. The City likewise acknowledges and respects the SCCEA's right to participate politically by, among other things, endorsing candidates. The City Council asked that we confirm with SCCEA that the email in question was not an official act of the City or authorized by the City Council or City management.

The City is committed to compliance with the Meyers-Milius-Brown Act, and with input from the SCCEA and Orange County Employees Association ("OCEA"), is committed to the following actions:

1. Forward Public Records Requests to the SCCEA/OCEA. As you may know, under the California Public Records Act (Gov. Code, § 6250 *et seq.*) ("PRA"), members of the public may request, and the City is required to produce, copies of non-exempt information



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

Ms. Aregaye  
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retained by the City as public records. Notwithstanding the City's obligations under the PRA, moving forward, whenever the City receives PRA requests touching on SCCEA and/or OCEA business, it will forward courtesy copies of such requests to the OCEA and/or SCCEA. Said requests will be directed to the individual (or individuals) designed by OCEA and/or SCCEA to receive such requests.

2. Communicate Only via Designated SCCEA/OCEA Representatives. The City is committed to ensuring that all communications between the City and SCCEA and/or OCEA occur through the proper channels. Consistent with this commitment, moving forward, all communications between the City and SCCEA and/or OCEA shall occur only via representatives designated the City, SCCEA, and OCEA for such communications.

3. Consult with SCCEA/OCEA re Parameters on Use of City Resources. Consistent with California law, the City's ethics rules restrict employees' use of City resources and participation in political activities. In relevant part, the City's ethics policy provides, "[a] public official may not 'use public resources for a campaign activity, or personal or other purposes which are not authorized by law' (Cal. Gov. Code § 8314 (a)). Further, other rules prohibit certain campaign activities in official capacity. For example, a public official may not participate in political activities while in uniform (Cal. Gov. Code § 3206)." <sup>1</sup> To provide clarity with respect to permitted and prohibited conduct, the City intends to adopt a policy with clear parameters that balance this constraint on the use of public resources with rights of City personnel under the Meyers-Milias-Brown Act (Gov. Code, § 3500 *et. seq.*). In preparing and implementing these policies, the City will meet and confer with the OCEA and/or SCCEA to discuss these parameters in an effort to move forward in a mutually agreeable manner.

In closing, the City reaffirms that it respects the rights of its employees, the SCCEA, and OCEA to organize and participate in the political process. The City's remedial actions will, at a minimum, provide additional clarity to City leadership and staff to ensure that official communications between the City and the SCCEA/OCEA occur in a transparent and organized manner. With respect to actions one and two provided above, the City requests that the SCCEA and/or OCEA provide the names and contact information for the designated individuals.

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<sup>1</sup> The City's "Ethical Practices of Government" resource is available on the City's official website at the following location: <https://www.san-clemente.org/about-us/city-organization/city-transparency/ethical-practice-of-government>  
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Please feel free to contact me directly if you have any additional questions or wish to discuss this matter further.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Scott C. Smith'.

Scott C. Smith  
of BEST BEST & KRIEGER LLP

cc: Mayor, City Council, and City Manager

Exhibit I



Laura Ferguson, City Councilwoman

Like



Laura Ferguson, City Councilwoman



October 25 at 1:16 PM

REGISTERED VOTERS SURVEYED: Not too long ago I posted about a Voter Opinion Poll ("survey") that commenced in January and concluded in March 2020. The survey was a surprise to me, simply because there was no discussion at the council level about this, so even the public was not made aware that 300 registered voters in San Clemente would receive a call to participate. Since this effort began and up to late September when I gave the San Clemente Times a copy of the results (because the Interim City Manager denied the media a copy citing "deliberative process privilege"), there had never been any mention of the survey by fellow councilmembers, so no discussion or deliberation on what to do with the results ever occurred.

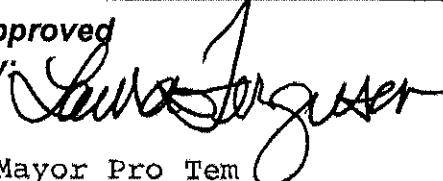
SURVEY RESULTS ARE THE PEOPLE'S BUSINESS: At the October 20 city council meeting, Councilmember Kathy Ward brought up the first in a series of articles the San Clemente Times is writing about the survey results. She was referring to a story on the Clean Ocean Fee that was published as she provided comments on the Coastal Advisory Committee's workplan on the meeting agenda. She mentioned the survey results were given to the paper illegally. After her comments, I pointed out that the city cannot claim exemption under the CPRA law to prevent the disclosure of the survey results. I had obtained three legal opinions on my own before providing to the San Clemente Times. I noted at the meeting that we certainly do not need another lawsuit for withholding public records, as we've lost one of those expensive lawsuits before. The city attorney attempted to interrupt me. It is my right to speak on a matter brought up by a fellow councilmember. It shocks the conscience that anyone would want to keep the survey a secret when the survey appears to have been undertaken for the city to determine if it would place certain tax measures on the ballot. By the time the paper made its public records request the time to place measures on the ballot had long since passed.

WHY A SECRET SURVEY?: Why is the city management and some councilmembers operating independently and making backroom deals without public involvement or scrutiny? I found out about the survey that was conducted after it was already complete only because I was inquiring for a resident who emailed me in late March asking if a survey was being

City Council Policy 1201-11



# POLICY AND PROCEDURE

<b>Subject:</b> City Council Meeting and Operating Procedures (Parliamentary Procedures, Due Process, Mayor/Mayor Pro Tempore, Council Correspondence, Meetings, Agendas, and Minutes)	<b>Index:</b> City Council  <hr/> <b>Number:</b> 1201-11
<b>Effective Date:</b> May 19, 2020	<b>Prepared By:</b> City Clerk
<b>Supersedes:</b> Policy and Procedures 1201-1 (Mayor and Mayor Pro Tempore); 1201-2 (Meetings of the City Council); 1201-3 (Order of Business and Preparation of Minutes); 1201-4 (Council Correspondence and Agenda); 1201-5 (Rules of Debate, Decorum, Voting Requirements & Procedures); 1202-2 Management/Streamlining of City Council Meetings); and 1201-11 (City Council Meeting and Operating Procedures)	<b>Approved By:</b>  Mayor Pro Tem

## 1.0 PURPOSE:

To establish policies for City Council meetings and operations, including parliamentary procedures, due process, election/roles of Mayor and Mayor Pro Tem, agendas, and the preparation of minutes.

## 2.0 ORGANIZATIONS AFFECTED:

City Council  
City Commissions and Committees\*

*\*Note: Except as otherwise noted throughout this Policy, this Policy shall also apply to the City's Commissions and Committees. In applying this Policy to City Commissions and Committees, the term "Council" shall be interpreted to mean the name of the City Commission or Committee, the term "Mayor" shall be interpreted to mean "Chairperson", the term "Mayor Pro Tempore shall be interpreted to mean "Vice Chair", the term "Manager" shall be interpreted to mean "Director", and the*

*term "City Clerk" shall be interpreted to mean the staff member responsible for providing support to the Commission/Committee.*

### **3.0 REFERENCES:**

The Ralph M. Brown Act, GC Section 54950, et seq.

### **4.0 POLICY:**

#### **4.1 Parliamentary Procedures and Due Process**

4.1.1 The proceedings of the City Council shall be guided under the latest revised edition of "Rosenberg's Rules of Order," on all matters pertaining to parliamentary procedure, but no ordinance, resolution, proceeding or other action of the City Council shall be invalidated or the legality thereof otherwise affected by the failure or omission to observe or follow such rules. In the event of a discrepancy between Rosenberg's Rules of Order and this Policy and Procedure, this Policy and Procedure shall prevail.

4.1.2 The Mayor, with assistance from the City Attorney, is designated as the parliamentarian for City Council meetings. The City Clerk shall assist in the City Attorney's absence. Any member of the City Council or the public (pursuant to process below) may raise a point of order and/or seek the City Attorney's input on parliamentary issues, which shall then be considered by the Mayor. The City Council may override any parliamentary decision of the Mayor with a majority vote. The Mayor may interpret and apply but not amend these policies.

Points of order may be raised at any time by City Councilmembers.

Points of order may be raised by members of the public in connection with their opportunity to speak on agenda items pursuant to Section 4.4.6. The Mayor (or chair) shall rule on the point of order and/or request clarification of the law from the City Attorney and then decide and rule. If the point of order is denied by the Mayor or chair, the person making the point of order may seek a vote of the entire Council or body, which decision shall be final.

Members of the public wishing to raise points of order after their opportunity to speak may submit those points of order in writing prior to the adjournment of the meeting. Items so submitted shall be presented for consideration by the City Council in connection with its approval of the minutes of that meeting pursuant to Section 4.6 hereof. At that time the Mayor and City Council will review and decide the point of order raised and determine whether it warrants scheduling and noticing of that item for reconsideration.

4.1.3 It shall be understood that a member of the City Council or prospective member of the City Council may, in the course of seeking elective office, be asked to state positions on general issues that may eventually come before the Council at a later date. This policy shall in no way impair that Councilmember's right to consider the issue and vote as he/she determines is appropriate.

4.1.4 Ex parte communications are communications received outside of Council meetings or hearings. When the Council acts in a legislative role (for example, to adopt general plan or zoning amendments or to adopt ordinances), Councilmembers are permitted to draw upon nearly all observations and considerations they receive inside and outside the Council meeting. On the other hand, when acting in a quasi-adjudicatory role (hearing permits, revocations, and similar non-legislative decisions), the Council, as fact-finder, should limit its consideration of facts to those presented at the hearing, where all sides have the opportunity to hear and rebut testimony given by all participants. To this end, Councilmembers should avoid receiving or gathering information that might otherwise influence its consideration of the written record and any other testimony it hears through the formal hearing process, or at least disclose their receipt of that information.

4.2 **Election of Mayor and Mayor Pro Tempore and Roles of Those Offices**

4.2.1 At the first Regular City Council meeting in December of each year, the Council shall elect from its members a Mayor and Mayor Pro Tempore. The new Mayor and Mayor Pro Tempore shall assume office immediately upon election. *(Note: Commissions and Committees shall elect from its members a Chairperson and Vice Chair at its first regular meeting occurring after Council completes its annual appointment process for Commission and Committee members and those members assume office.)*

4.2.2 The Mayor and Mayor Pro Tempore shall serve a one-year term at the pleasure of the Council majority.

4.2.3 The Mayor shall act as the primary spokesperson and official representative of the City Council, unless such responsibility is delegated by the Mayor, or otherwise assigned by a majority of the City Council.

4.2.4 The Mayor shall preside at all regular, adjourned regular, special and emergency meetings of the City Council, including joint meetings with commissions and committees and closed sessions.

- 4.2.5 The Mayor shall execute all official City documents, warrants and correspondence approved by the City Council.
- 4.2.6 The Mayor is authorized to issue proclamations, commendations and certificates of recognition, which may be presented at Council meetings under Special Presentations. The total time allotted to Special Presentations should, if possible, be limited to 15 minutes per meeting. *(This section does not apply to Commissions or Committees.)*
- 4.2.7 Nothing in this section is intended to suggest that the office of Mayor possesses formal powers or authority in excess of other members of the City Council; rather, the person serving as Mayor is to be recognized as the chairperson of the Council.
- 4.2.8 The Mayor Pro Tempore shall serve and perform the functions of the Mayor in the absence of the Mayor. If both the Mayor and Mayor Pro Tempore are absent from a City Council meeting, the Council members present shall select a Councilmember from those members present to perform the functions of Mayor at that particular meeting.

#### 4.3 **City Council Correspondence**

- 4.3.1 The City Manager, or his/her designee, is authorized to open and examine all mail or other written communications addressed to the City Council as a body, but shall not open correspondence addressed to an individual Councilmember without their express authorization.
- 4.3.2 The City Manager may take action, or direct that action be taken, on issues or requests that do not require Council action. The City Manager shall inform Council when actions are taken on matters of significance or that are likely to be of interest to the City Council.

#### 4.4 **City Council Meetings**

- 4.4.1 The date, time and location of Regular Meetings of the City Council shall be established by resolution. At 11:00 p.m. at each meeting, the City Council, by majority vote, will determine whether to continue the meeting or adjourn.
- 4.4.2 At all meetings of the City Council, a majority of the Council members shall constitute a quorum for the transaction of business. In the event less than a quorum of the City Council is present, the City Clerk shall adjourn the meeting (which may include adjourning to an Adjourned Regular Meeting), post a Notice of Adjournment,



and prepare minutes that reflect that the meeting was adjourned due to lack of a quorum.

- 4.4.3 The City Clerk, or Mayor, shall announce an agenda item before discussion on that item commences.
- 4.4.4 Each person desiring to address the Council is requested to submit to the City Clerk a speaker form. After being called upon by the Mayor, the speaker may proceed to the podium. The speaker may state for the record his/her name and city of residence, but shall not be required to do so.

Members of the public may speak for three (3) minutes and project applicants and appellants (including members of an applicant's or appellant's project presentation team, when applicable) may speak for a combined total of ten (10) minutes on agenda items. At Council's request where Council is acting in a fact-finding or hearing capacity, the Mayor may grant additional time (unless overruled by a majority of Councilmembers present) to speakers on agenda items.

Speakers on non-agenda items may speak for three (3) minutes during the oral communications - public forum portion of the meeting.

The time that a speaker devotes to responding to Council inquiries shall not be deducted from their allotted speaker time.

- 4.4.5 Members of the public may not assign their speaker time to another person.
- 4.4.6 The purpose of addressing the City Council is to communicate formally with the City Council regarding matters that relate to City Council business or citizen concerns within the subject matter jurisdiction of the City Council. Persons addressing the City Council on an agenda item shall confine their remarks to the matter under consideration by the City Council. Speakers may be asked to clarify how their comments relate to the matter at hand. Speakers may address the entire Council or individual Councilmembers, and, if allowed by the Mayor or chair, City staff.
- 4.4.7 Once recognized, members of the public shall not be interrupted when speaking unless to be called to order by the Mayor to: (i) curtail extraordinary repetition, (ii) curtail speech that is irrelevant to the City Council's subject matter jurisdiction, (iii) explain how his or her speech relates to the City's subject matter jurisdiction, or (iv) address some other point of order. If a speaker is interrupted to be called to order, the speaker shall cease speaking until the question

of order is determined, and if in order, he or she shall be permitted to proceed, with additional time allotted for the time taken to determine the question of order.

- 4.4.8 In order to avoid repetitious presentations, whenever any group of persons wishes to address the Council with the same message, it shall be proper for the Mayor to request that a spokesperson be chosen by the group to represent the group's position. Speakers shall not, however, be required to abide by such a request.
- 4.4.9 To expedite Council meetings, Councilmembers are encouraged to contact Staff prior to Council meetings to obtain answers to questions and to obtain clarifications as needed.
- 4.4.10 Staff shall compose Administrative Reports in a clear and concise manner. Staff shall strive to write reports in a manner that can be easily understood by persons that do not have training in the report's subject matter.
- 4.4.11 Staff presentations at Council meetings are to be condensed to the briefest extent possible, while still providing a basic overview of the issue under consideration. Staff is encouraged to refrain from reiterating issues previously addressed in the Administrative Report. However, Staff engaged in such communications shall not use these opportunities to communicate with the members of the City Council the comments or position of any other member of the City Council on City Council business.
- 4.4.12 Members of the public shall not engage in conduct that disrupts, disturbs, or otherwise impedes the orderly conduct of the City Council meeting. Any person who so disrupts the meeting is subject to removal from the meeting.

Prior to removing anyone from a City meeting, the Mayor (or other designated chair) shall: (i) notify the person that he/she is in violation of this Section 4.4.12, (ii) specify the specific behavior giving rise to that conclusion; (iii) explain all grounds for the belief that the person's conduct is in violation of law/policy and why such conduct subjects the person to expulsion; and (iv) notify the person that if the conduct continues he/she will be removed. The person receiving such notification shall be asked if he/she understands the conclusion but shall not be required to accept it.

Members of the public receiving notice of disruption pursuant to this section shall have the right, prior to being removed from the meeting, to ask the Mayor to consult with the City Attorney on the grounds for expulsion, and to submit a point of order on the grounds for expulsion. The City Council may override this decision

pursuant to Section 4.1.2. The City Attorney shall have a duty to inform the Mayor (or other designated chair) and the public if the City Attorney believes that the Mayor's action is in violation of applicable law.

4.4.13 Motions must be seconded in order to proceed to a vote.

#### **4.5 City Council Agendas**

- 4.5.1 With the exception of items added to a City Council agenda pursuant to Section 4.5.4 of this Policy, the City Manager and Mayor in conference shall be responsible for determining items to appear on City Council meeting agendas.
- 4.5.2 The standard template for City Council agendas shall be established by Council by majority vote. The City Manager shall have the authority to reorganize the template on a case-by-case basis if he/she believes that a variation in the normal order of business is appropriate.
- 4.5.3 Councilmembers may agendize items to enable them to "report out" on matters relating to their own activities, including activities pertinent to their Council-appointed positions on regional commissions, committees and boards, provided the report is informational only. If Council action is being sought, the process defined in Section 4.5.4 of this Policy shall be followed.
- 4.5.4 Two members of the City Council may propose at a Council meeting that an item be agendized for future Council discussion, consideration, and/or action. Subject to notice and hearing requirements, the item shall be agendized for a future meeting and noticed as required by law.
- 4.5.5 Notwithstanding Sections 4.5.1 and 4.5.4 of this Policy, the process to review, appeal, or otherwise "call up" decisions by the Planning Commission or other subordinate City bodies shall be subject to the requirements of the San Clemente Municipal Code.
- 4.5.6 Notwithstanding Section 4.5.4, a proposal to reconsider any action taken by the City Council may be raised only at the same meeting or the next regularly scheduled meeting of the City Council after the action is taken and may be raised only by one of the Councilmembers who voted with the prevailing side. Additionally, the motion to reconsider may only be made by one of the Councilmembers who voted with the prevailing side.
- 4.5.7 The City Clerk shall be responsible for the preparation of Council meeting agendas and shall cause copies to be posted on the City

Hall bulletin board(s) and City website. Whenever feasible, regular and adjourned regular meeting agendas shall be posted at least six days prior to meetings, but in no event less than the posting time requirements as set forth in State law. In the case of special meetings, agendas shall be posted as soon as practical, but in no event less than the posting time requirements as set forth in State law.

- 4.5.8 Consent Calendar items shall be comprised of items that are expected to be noncontroversial. Unless an item is removed from the Consent Calendar by a member of the Council, staff, or the public for separate discussion and action, the Consent Calendar may be acted upon by one motion.
- 4.5.9 The City Council may waive the reading in full of all Resolutions and Ordinances. The reading of Resolution titles shall be optional. The reading of Ordinance titles shall not be waived.
- 4.5.10 Members of the public may address Council concerning matters within the jurisdiction of the City of San Clemente, but not separately listed on the agenda, during the Oral Communications portion of the agenda. Speakers may address Council once during either Oral Communications Part 1 or Part 2. Speakers shall be allotted 3 minutes in which to give his or her presentation.

#### 4.6 City Council Minutes

- 4.6.1 The City Clerk shall have exclusive responsibility for the preparation of the minutes.
- 4.6.2 The minutes of City Council meetings shall be submitted to Council for approval/modification at a City Council meeting. Any direction for modifications to the City Council minutes shall only be made upon a majority vote of the City Council.
- 4.6.3 Minutes shall be prepared in brief concise form, in what are commonly referred to as "action minutes". Action minutes memorialize what was *done* at a meeting, as opposed to what was *said* at a meeting. An exception to this guideline is that a brief summarization of comments provided to Council by the public are to be included in the minutes. Additionally, the identity of Councilmembers who make motions, second motions, and cast votes on motions are to be included in the minutes.
- 4.6.4 Unless the reading of the minutes of a City Council meeting is ordered by a majority of the Council, such minutes may be approved without reading if the City Clerk has previously furnished each Councilmember with a copy thereof.

4.6.5 The approved minutes shall be executed by the Mayor and City Clerk upon approval by the City Council and shall constitute the official record of the City Council meeting.

4.6.6 The City Clerk shall enter the original executed minutes into the official records of the City as a permanent document.

4.7 **Closed Sessions**

4.7.1 The City Council may hold closed sessions during duly-noticed Council meetings on issues authorized by State law.

4.7.2 A City Commission or Committee may hold closed sessions during duly-noticed meetings of its body on issues authorized by State law, the City Council, and the City Attorney.

4.7.3 No member of the City Council, employee of the City, or any person present during a closed session shall disclose to any other person the content or substance of discussion or action which took place during the session, unless a majority vote of the Council authorizes such disclosure.

4.7.4 Closed sessions shall be limited to members of the City Council, City Manager, City Attorney and/or City legal counsel, as well as staff members and experts designated by the City Manager or City Attorney to attend portions of Closed Sessions relating to specific issues, as permitted by law.

4.7.5 To the extent possible, the public will be notified prior to the time that the City Council recesses to closed session as to whether or not a public announcement of action is anticipated following the Closed Session.

4.7.6 Where potential plaintiffs and defendants have manifested or communicated their awareness of facts and circumstances and a legal theory connecting those facts and circumstances to potential litigation involving the City, those facts and circumstances, together with (i) the identity of potential parties or (ii) related documentation, shall be disclosed prior to a closed session to discuss anticipated litigation, in accordance with GC 54956.9.

Exhibit J

-----Original Message-----

From: Ferguson, Laura <FergusonL@san-clemente.org>

Sent: Tuesday, October 6, 2020 7:27 AM

To: Sund, Erik <SundE@san-clemente.org>; Scott Smith <Scott.Smith@bbklaw.com>; Baade, Joanne <BaadeJ@san-clemente.org>

Cc: Lowe, Heather <LoweH@san-clemente.org>; Ferencz, Veronica <FerenczV@san-clemente.org>

Subject: Violation of city policy

CAUTION - EXTERNAL SENDER.

Dear Erik, Scott and Joanne,

I had informed the interim city manager Erik Sund to place the Shorecliffs golf course matter pertaining to the slope remediation work on the closed session discussion section A. He did not do so. There is a problem in which I had wished to speak with my fellow council members about. Now I cannot.

Erik violated the Council policy by unilaterally decided not to place this item on the closed session for public view over my request. This is a clear violation of his duties and responsibilities. It appears that he and Scott Smith have joined together to include under "work in progress" and attempted to violate the Brown Act requirement of disclosure of subject matter of all closed session subject matter.

City attorney however included this item in "additional non-closed session work in progress" for closed session which is not even published on the closed session and not items discussed (yet included in the agenda report for council closed session) which I am not sure is even legal.

In the future if an item I've requested is not on the agenda I will be sending to the City Clerk to

Include in the agenda which she is duty-bound to include under current Council policy. Scott, if you disagree please provide me with the legal basis for your disagreement.

Thank you.

Best,

Laura Ferguson  
Mayor Pro Tem

Sent from my iPhone

This email and any files or attachments transmitted with it may contain privileged or otherwise confidential information. If you are not the intended recipient, or believe that you may have received this communication in error, please advise the sender via reply email and immediately delete the email you received.