

CITY OF SAN CLEMENTE

City Council Minutes

Regular Meeting – November 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 Regular San Clemente City Council meeting was called to order on November 17, 2020 at 5:03 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

CLOSED SESSION

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

Anonymous, communication dated November 17, 2020 concerning Closed Session Item D relating to a claim filed by former City Manager, James Makshanoff.

MOTION BY MAYOR PRO TEM FERGUSON to direct City Attorney Smith and Interim City Manager Sund to recuse themselves from Closed Session deliberations concerning former City Manager Makshanoff's claim and allow the California Joint Powers Insurance Authority (CJPIA) to handle the claim.

City Attorney Smith advised that he is obligated by contract to represent the Council in litigation even when special counsel is engaged and further noted that Interim City Manager Sund does not have a financial interest in the claim.

THE MOTION ON THE FLOOR DIED FOR LACK OF A SECOND.

City Attorney Smith advised that all necessary disclosures concerning this evening's Closed Session were published with the agenda.

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0, to recess to Closed Session at 5:06 p.m. to discuss the following:

A. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

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

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

B. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Pursuant to Government Code section 54956.8
Property: 654 Camino de los Mares (San Clemente hospital)
Agency Negotiator: Interim City Manager, City Attorney, Councilmember Hamm, Councilmember James

Negotiating Parties: City of San Clemente and Candor Health Care and/or their authorized agent(s); MemorialCare Health System, its counsel, and/or their authorized agent(s); Palomar Hospital District and/or their authorized agent(s)

Under Negotiation: Consideration of potential proposal for interim or long term acquisition or lease

Property: Access easement at 255, 259, and 261 West Marquita
Agency Negotiators: Interim City Manager, City Attorney, Utilities Director
Negotiating Parties: Sea Bluff Homeowner Association
Under Negotiation: Operating Memorandum for the Marquita Slope Interim Reconstruction Work

Property: 105 West Avenida Pico
Agency Negotiators: Interim City Manager, Economic Development Officer
Negotiating Parties: 24 Carrots, Sanaz Jahangard
Under Negotiation: Lease Amendment

C. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION

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

D. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)
Number of potential cases: 3

BUSINESS MEETING CONVENED

The Regular Business Meeting convened at 6:02 p.m., with all members participating via teleconference, except Councilmember Hamm who joined the teleconference meeting at 6:03 p.m.

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Ferguson led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

A. **Toll Road Update**

Councilmember Ward reported that the City hosted a Town Hall meeting on November 5, 2020 to update residents on transportation issues in South Orange County as well as the City's efforts to prevent a toll road from being constructed through San Clemente; reported that Rancho Mission Viejo has requested that Los Patrones connect at La Pata, noting that studies will be done to determine impacts that the proposed arterial connection might have on the region.

Councilmember James stated that the City of San Clemente will insist on having a seat at the table when the Los Patrones extension plans are discussed.

Council requested that Staff update the Toll Road information page on the City's website and include the video from the virtual Town Hall meeting.

B. **City Net Update/Homeless Issue**

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

Isabel Ignacio, communication dated November 17, 2020

Brad Fieldhouse, City Net, provided an update on San Clemente's homeless issue, explaining that City Net has increased its presence in San Clemente to three days per week; summarized City Net's activities, interactions and outreach efforts and responded to Council inquiries.

C. **Presentation of Proclamation – Small Business Saturday**

Mayor Pro Tem Ferguson presented a Proclamation declaring November 28, 2020 as Small Business Saturday. The proclamation will be added to the City's website.

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

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

The following comments related to sand replenishment at Cottons Point:

Tiffany O'Brien, communication dated November 13, 2020
William Enquist, communication dated November 13, 2020
Michael Ontiveros, communication dated November 14, 2020
Shane Jager, communication dated November 15, 2020
Patrick Murphy, communication dated November 16, 2020
Camisha Gates, communication dated November 15, 2020
Curt Johnson, communication dated November 14, 2020
Deborah A. Johnson, communication dated November 14, 2020
Bill Bemus, communication dated November 14, 2020
Sharon Baziak, communication dated November 14, 2020
Steve Lang, communication dated November 13, 2020
Al DeJesus, communication dated November 16, 2020
The Hicks and Rhoda families, communication dated November 16, 2020
Chris and Tess Nelson, communication dated November 16, 2020
Bailey Bianco Sparks, communication dated November 16, 2020
Vince Bianco, communication dated November 16, 2020
Lorraine Judd, communication dated November 15, 2020
Gregory Ray, communication dated November 15, 2020
Willow Jager, communication dated November 15, 2020
Alyson Vaughn, communication dated November 15, 2020
Marcus and Jennifer Vanneman, communication dated November 16, 2020
Aleesha Herde, communication dated November 16, 2020
Leslie Dame, communication dated November 16, 2020
Robert and Stephanie Christie, communication dated November 16, 2020
Cristina Gabriel, communication dated November 16, 2020
Scott Leishman, communication dated November 16, 2020
Bruce Kiddoo, communication dated November 16, 2020
Michael Asay, communication dated November 16, 2020
Jeffrey Provance, communication dated November 17, 2020
The Chao Family, communication dated November 16, 2020
Steven Marshall, communication dated November 17, 2020

Ann Perez, communication dated November 17, 2020, thanking outgoing Councilmember Hamm for his service to the City and urging the new Councilmembers to work together.

Karen Prescott-Loeffler, communication dated November 17, 2020, requesting that the alleged mistreatment of Mayor Pro Tem Ferguson be investigated.

Joe Janis, communication dated November 17, 2020, concerning former City Manager Makshanoff's claim against the City.

3. MOTION BY MAYOR PRO TEM FERGUSON, SECOND BY COUNCILMEMBER WARD, 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**

Mutual Release Clause – James Makshanoff Claim

City Attorney Smith announced that the following action was taken during Closed Session: MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER JAMES, CARRIED 3-1 (MAYOR PRO TEM FERGUSON VOTING NAY), to approve a mutual release clause in the settlement agreement under consideration by the California Joint Powers Insurance Authority (CJPIA) with regard to the James Makshanoff claim. The settlement agreement, if approved by the CJPIA and claimant, will be publicly available in the City Clerk's Office after execution.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0, to approve the Consent Calendar, with the removal of Items H, K and L.

A. **City Council Minutes**

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0, to approve the City Council Regular Meeting minutes of October 20, 2020.

B. **Commission/Committee Minutes**

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

1. Design Review Subcommittee Regular Meeting Minutes of August 12, 2020.
2. Golf Course Committee Adjourned Regular Meeting Minutes of August 24, 2020.
3. Beaches, Parks and Recreation Commission Adjourned Regular Meeting Minutes of September 8, 2020.
4. Human Affairs Committee Special Meeting Minutes of July 21, 2020.
5. Human Affairs Committee Regular Meeting Minutes of August 11, 2020.
6. Zoning Administrator Regular Meeting Minutes of October 22, 2020.
7. Planning Commission Regular Study Session Minutes of November 4, 2020.

C. **Notice of Completion – FY 2020 Street Improvement Projects and FY 2020 Slurry Seal Program**

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

1. Accept the FY 2020 Street Improvement Projects (Project No. 10319) and FY 2020 Slurry Seal Program (Project No. 20307), from the contractor, Palp, Inc. DBA Excel Paving.
2. Authorize the Public Works Director to execute, and the City Clerk to record, the Notice of Completion for the FY 2020 Street Improvement Projects and FY 2020 Slurry Seal Program.
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 Palp, Inc. DBA Excel Paving.
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.

D. Notice of Completion – FY 2019 Parking Lot Maintenance and Street Maintenance for Campo Raso

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

1. Accept the FY 2019 Parking Lot Maintenance (Project No. 29304), and Street Maintenance for Campo Raso (Project No. 27306), from the contractor, Horizons Construction Company International, Inc.
2. Authorize the Public Works Director to execute, and the City Clerk to record, the Notice of Completion for FY 2019 Parking Lot Maintenance and Street Maintenance for Campo Raso.
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 Horizons Construction Company International, Inc.
4. Authorize the City Clerk to release the Performance Bond upon receipt of a Warranty Bond in the amount of 25% of the construction cost.

E. Municipal Facility License Agreement – Verizon Wireless

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

1. Approve, and authorize the Mayor Pro Tem or designee, to execute, Contract C20-60, a Municipal Facility License Agreement by and between the City of San Clemente and Los Angeles SMSA Limited Partnership (Verizon), for the installation of small wireless telecommunications facilities within the public right-of-way.
2. Authorize the City Manager to execute future extensions and supplements to the Municipal Facility License Agreement, as specified in the lease, provided that the lease rate is not reduced.

F. **Notice of Completion – Arterial Street Pavement Maintenance (FY 2020) for El Camino Real (Ave. Estacion to Ave. Gaviota) and Ave. Pico (El Camino Real to Calle Los Molinos), and Pavement Repairs for the Water Division and Pavement Repairs in Various Locations**

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

1. Accept the Arterial Street Pavement Maintenance (FY 2020) for El Camino Real (Ave. Estacion to Ave. Gaviota) and Ave. Pico (El Camino Real to Calle Los Molinos) (Project No. 10320); and Pavement Repairs for the Water Division (Project No. 24400); and Pavement Repairs in various locations (Project No. 27306), from the contractor, Palp, Inc. DBA Excel Paving.
2. Authorize the Public Works Director to execute, and the City Clerk to record, the Notice of Completion for the Arterial Street Pavement Maintenance (FY 2020) for El Camino Real (Ave. Estacion to Ave. Gaviota) and Ave. Pico (El Camino Real to Calle Los Molinos), and Pavement Repairs for the Water Division, and Pavement Repairs in various locations.
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 Palp, Inc. DBA Excel Paving.
4. Authorize the City Clerk to release the Performance Bond upon receipt of a Warranty Bond in the amount of 25% of the construction cost.

G. **Notice of Completion – Marine Safety Building and Bulkhead Repairs and Accessibility Improvements and Pier Timber Piles Repair**

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

1. Accept the Marine Safety Building and Bulkhead Repairs, and Accessibility Improvements (Project No. 16530); and Pier Timber Piles Repair (Project No. 16811), from the contractor, Jilk Heavy Construction, Inc.
2. Authorize the Public Works Director/City Engineer to execute, and record, the Notice of Completion for the Marine Safety Building and

Bulkhead Repairs, and Accessibility Improvements and Pier Timber Piles Repair.

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 Jilk Heavy Construction, Inc.
4. Authorize the City Clerk to release the Performance Bond upon receipt of a Warranty Bond in the amount of 25% of the construction cost.
5. Approve, and authorize the Public Works Director/City Engineer to execute, Amendment No. 4 to Contract AC-706, by and between the City of San Clemente and TranSystems. This amendment increases the contract amount from \$133,900 to \$136,800 (an increase of \$2,900) and extends the contract term to February 22, 2021.

I. **Operating Memorandum – Marquita Slope Interim Reconstruction Work for Slope Rehabilitation Adjacent to Linda Lane Pump Station**

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

1. Authorize the Interim City Manager to execute the Operating Memorandum for the Marquita Slope Interim Reconstruction Work, Project No. 21208.
2. Approve a supplemental appropriation in the amount of \$130,000 to Account 054-476-45300-000-21208 from the Sewer Fund Depreciation Reserve.
3. Approve, and authorize the Interim City Manager to execute, Contract C20-61, by and between the City of San Clemente and Peter and Associates, providing for geotechnical design (Project No. 21208), in an amount not to exceed \$108,904.
4. Direct Staff to negotiate cost share if project costs exceed \$1.5 million and finalize an agreement for construction between the City and properties at 255, 259 and 261 West Marquita.

J. **Classification and Compensation Adjustments for Marine Safety and Golf Positions**

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0, to adopt Resolution No. 20-61 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADOPTING REVISED SALARY SCHEDULES AND UPDATED JOB DESCRIPTIONS AND AMENDING RESOLUTION NO. 17-15 AND ANY OTHER RESOLUTIONS IN CONFLICT THEREWITH.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

H. **Joint Homeless Subcommittee Fiscal Year 2020-21 Annual Work Plan**

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER JAMES, CARRIED 3-1 (MAYOR PRO TEM FERGUSON VOTING NAY), to continue the Joint Homeless Subcommittee Fiscal Year 2020-21 Annual Work Plan to February 2021.

K. **Casa Romantica Parking Lot Improvements**

Economic Development Officer Lightfoot reported that the Casa Romantica Board of Directors requested the following insertions to the contract amendment:

1. *Addition to Section 1 to note that the Casa Romantica satisfied the bid requirements for the project and acknowledging that the Tenant is obligated to comply with prevailing wage requirements.*
2. *Addition to Section 5.2.5 to provide that the City shall disburse the City Direct Contribution, the Ocean Grant, and the City Loan to Tenant within ten business days following the execution of the Amendment.*
3. *Addition to Section 5.2.7 to provide that in the event the parties mutually agree to a larger scope of work for the Project than as set forth in Exhibit A, then the respective amounts of the Tenant's contribution, the City Direct Contribution, the Ocean Grant, and the City Loan shall be appropriately adjusted on a pro rata basis.*
4. *Addition to Section 5.3 to specify that in the event the Lease expires or terminates prior to June 30, 2031, then any remaining City Loan payments then outstanding shall be forgiven (and Tenant shall have no liability therefor).*

Economic Development Officer Lightfoot explained that Staff and the City's legal counsel support Items 1 and 2 above, but do not support Items 3 and

4. With regard to Item 4, Staff noted that the proposed Amendment includes a push back on the start of loan repayments to 2022.

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

1. Approve, and authorize the Mayor Pro Tem to execute, Amendment No. 3 to Contract C01-36, a lease operating agreement by and between the City of San Clemente and the Casa Romantica, modifying the funding plan for the parking lot improvements to cover the bid cost of \$645,000, with inclusion of the following:
 1. *Addition to Section 1 to note that the Casa Romantica satisfied the bid requirements for the project and acknowledging that the Tenant is obligated to comply with prevailing wage requirements.*
 2. *Addition to Section 5.2.5 to provide that the City shall disburse the City Direct Contribution, the Ocean Grant, and the City Loan to Tenant within ten business days following the execution of the Amendment.*
2. Appropriate \$85,500 from the General Fund unassigned fund balance, Account 001-000-23430 into Account 057-543-45300-000-19809, Improvements Other Than Buildings.

L. **Strategic Planning Services for Transportation and Mobility Efforts**

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

Melissa Phelps, communication dated November 17, 2020

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

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER JAMES, CARRIED 3-1 (MAYOR PRO TEM FERGUSON VOTING NAY), to:

1. Approve, and authorize the Interim City Manager to execute, Contract C20-62, by and between the City of San Clemente and Tower Marketing & Investments, providing for toll road expansion strategic planning services for a not-to-exceed annual amount of \$60,000 for the period of December 1, 2020 through November 30, 2021, with an option to renew for one year.
2. Approve, and authorize the Interim City Manager to execute, Contract C20-63, by and between the City of San Clemente and Mike

Roos & Company, providing for Legislative Analysis Services for a not-to-exceed annual amount of \$48,000 for the period January 1, 2021 through December 31, 2021, with an option to renew for one year.

3. Approve, and authorize the Interim City Manager to execute, Contract C20-64, by and between the City of San Clemente and Englander, Knabe & Allen, providing for Strategic Planning and Communications Services for a not-to-exceed annual amount of \$180,000 for the period of December 1, 2020 through November 30, 2021, with an option to renew for one year.
4. Approve, and authorize the Interim City Manager to execute, Contract C20-65, by and between the City of San Clemente and The Otelie Company, providing for Traffic Advisory Services for a not-to-exceed annual amount of \$60,000 for the period of January 1, 2021 through December 31, 2021, with an option to renew for one year.

7. **PUBLIC HEARINGS**

A. **Pico Plaza In-N-Out (115 Via Pico Plaza) - Appeal of Conditional Use Permit/Site Plan Permit/Architectural Permit/Discretionary Sign Permit**

Public Hearing to consider an appeal of the Planning Commission's approval of Conditional Use Permit 19-346, Site Plan Permit 19-347, Architectural Permit 19-348 and Discretionary Sign Permit 19-349, which approved the construction and operation of a one-story, drive-thru fast food restaurant with outdoor dining area for In-N-Out at 115 Via Pico Plaza.

City Clerk Baade announced that the Applicant requested that the Public Hearing be continued until the City Council meeting of January 19, 2021.

Mayor Pro Tem Ferguson opened the Public Hearing.

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

Joe Lambert, communication dated November 16, 2020

Lindsey Canullo, communication dated November 16, 2020

Annette Chavarria, communication dated November 16, 2020

Yvonne Armstrong, communication dated November 17, 2020.

MOTION BY MAYOR PRO TEM FERGUSON, SECOND BY COUNCILMEMBER JAMES, CARRIED 4-0, to continue the Public Hearing to the Regular Council Meeting of January 19, 2021.

B. **Fee Adoption for Orange County Sheriff's Department Review of Massage Establishment Applications and Consideration of an Amendment to the Police Services Contract**

Public Hearing to consider authorizing participation in the Orange County Sheriff's Department massage establishment application review and fee program, and approving an amendment to the Police Services contract to provide for review of massage establishment applications.

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

Mayor Pro Tem Ferguson opened and closed the Public Hearing, there being no comments to be read.

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

1. Approve, and authorize the Mayor Pro Tem to execute, Amendment No. 1 to Contract C18-33, by and between the City of San Clemente and the County of Orange (Police Services Contract), providing for review of massage establishment applications.
2. Adopt Resolution No. 20-59 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING PARTICIPATION IN THE ORANGE COUNTY SHERIFF'S DEPARTMENT MASSAGE ESTABLISHMENT APPLICATION REVIEW AND FEE PROGRAM.

8. **UNFINISHED BUSINESS**

A. **Code Amendment – Special Events and Amplified Sound Permits**

Report from the Interim City Manager concerning possible Code amendments relating to Special Events and Amplified Sound Permits.

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

Melissa Phelps, communication dated November 17, 2020

Recreation Manager Wylie reviewed the contents of the Administrative Report and responded to Council inquiries.

Following discussion, MOTION BY COUNCILMEMBER JAMES, SECOND BY COUNCILMEMBER WARD, CARRIED 3-1 (MAYOR PRO TEM FERGUSON VOTING NAY), to introduce Ordinance No. 1706 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA (I) MOVING SAN CLEMENTE MUNICIPAL CODE CHAPTER 8.72 RELATING TO SPECIAL EVENT PERMITS FROM TITLE 8 (HEALTH AND SAFETY) TO TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) AND AMENDING THE SAME; (II) MOVING SAN CLEMENTE MUNICIPAL CODE SECTION 8.48.080 RELATING TO AMPLIFIED SOUND PERMITS FROM TITLE 8 (HEALTH AND SAFETY) TO TITLE 17 (ZONING) AND AMENDING THE SAME; (III) AMENDING SUBSECTION 8.48.090(C); (IV) REPEALING SECTION 17.16.190; AND (V) AND FINDING THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, with the deletion of Subsection C under Code Section 12.34.040 relating to expressive activity.

9. **NEW BUSINESS**

A. **Warrant Register**

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

Approve Wire Transfers Nos. 2325 through 2330, and Warrant Nos. 569958 through 570069, paid on 10/23/20, in the amount of.....\$ 1,056,757.25

Approve Wire Transfers Nos. 2331 through 2333, and Warrant Nos. 570070 through 570224, paid on 10/30/20, in the amount of.....\$ 1,913,896.68

Approve Wire Transfers Nos. 2334 through 2340, and Warrant Nos. 570225 through 570347, paid on 11/6/20, in the amount of.....\$ 3,348,841.85

TOTAL WARRANT REGISTER.....\$ 6,319,495.78

Payroll Register

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

Approve Warrant No. 807 and Automatic Deposit Advises 67298 through 67582, for the period of 10/5/20 through 10/18/20, paid on 10/23/20, in the amount of.....\$ 453,328.29

Approve Warrant No. 808 and Automatic Deposit Advises 67583 through 67847, for the period of 10/19/20 through 11/1/20, paid on 11/6/20, in the amount of.....\$ 468,830.18

TOTAL PAYROLL REGISTER.....\$ 922,158.47

B. **Resolution Reaffirming the City Council's Opposition to any Toll Road Extension that Cuts Into the City of San Clemente**

Report from the Interim City Manager concerning possible adoption of a Resolution to reaffirm the City Council's opposition to any toll road extension that cuts into the City of San Clemente.

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

Melissa Phelps, communication dated November 17, 2020

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

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM FERGUSON, CARRIED 4-0, to adopt Resolution No. 20-62 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, OPPOSING ANY TOLL ROAD EXTENSION THAT CUTS THROUGH THE CITY OF SAN CLEMENTE.

C. **Process and Grounds for Possible Censure of Councilmember(s)**

Report from the City Attorney concerning process and grounds for possible censure of Councilmember(s).

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

Steven Marshall, communication dated November 16, 2020

Anonymous, communication dated November 17, 2020

Martina McBurney-Wheeler, communication dated November 17, 2020

Melissa Phelps, communication dated November 17, 2020

Cristina Talley, Conflicts Counsel, reviewed the contents of the Administrative Report, dated November 17, 2020 and on file with the City Clerk, which explained due process procedures associated with the potential censure of a member of the City Council; responded to Council inquiries.

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER JAMES, CARRIED 3-1 (MAYOR PRO TEM FERGUSON VOTING NAY), to adjourn at the end of this meeting to an Adjourned Regular Meeting to be held on November 23, 2020 at 6:00 p.m.

for the purpose of conducting a hearing with regard to a possible censure of Mayor Pro Tem Ferguson. Further, that Mayor Pro Tem Ferguson be afforded the due process that she deserves and the opportunity to respond to the following alleged grounds for her censure:

- Lack of respect for City Council majority decisions and policy.
- Lack of respect for the City Manager form of government.
- Lack of respect for any City Manager during her term of office as a Councilmember.
- Lack of effective working relationships as defined in Best Practices for a City Manager Form of Government.
- Lack of respect for the City Attorney and legal counsel provided to her.
- Accusation of misconduct and insubordination against City employees when they would not do what she wanted that was in opposition to Council direction and in violation of policies for process in the San Clemente Municipal Code.
- Unprofessional conduct, attacks, disparagement of the City Manager, City Attorney and Human Resources Manager at the dais, in emails, social media and to the press that undermine the public trust in governance in the City of San Clemente.
- Unilateral actions by the Mayor Pro Tem that are beyond the authority of a Council member or beyond Council direction concerning personnel matters, recruitment, or rights of public employees.
- Violations of the Brown Act, disclosing confidential information and disclosure of documents including serial meeting conversations.
- Unilaterally ordering Staff to agendize issues without Council support in violation of policies for process in the San Clemente Municipal Code.
- Lack of cooperation and unilateral actions outside the authority of a Council member in affairs dealing with the City's insurance carrier, the California Joint Powers Insurance Authority, and their administration of claims.

- Accusations against Council members that involve Closed Session meetings, taking advantage that other Councilmembers would not break confidentiality to respond to her allegations. The most recent was when Councilmember James was running for re-election and could not respond to her allegations that he yelled at her at the top of his lungs.
- Accusing Council of Brown Act violations or being rough on her in Closed Session and yelling at her.
- Unilaterally sharing confidential information or documents after briefings where she had been advised the information is confidential, thereby waiving privilege for Council when she had no authority to do so.
- Conducting a social media Facebook page where she shared emails from Staff and informed the public that she is waiting on answers from the City Manager and no one is responding to her emails.
- Publicly giving the City Manager 24 hours to respond to an allegation from her.
- Disparaging City Council decisions and urging members of the public to send emails to the Council to urge them to change their vote and agree with her.
- Consistently eroding the trust in City governance and the public is calling for the City Manager and City Attorney to be fired because of the comments she provided and the environment she has fostered on her social media page “Laura Ferguson, Councilwoman”.
- Incorrectly casting blame for legal actions on the City Attorney when fees are the result of Council actions.
- Incorrectly casting blame on City Managers when, in fact, they are following the direction and policies of the City Council.

D. **Policy and Procedure 1201-12 - City Council Access to Confidential Documents**

Report from the City Attorney and Interim City Manager concerning possible adoption of a Policy and Procedure relating to City Council access to confidential documents.

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

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

Steven Marshall, communication dated November 16, 2020

Following discussion, MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER JAMES, CARRIED 3-1 (MAYOR PRO TEM FERGUSON VOTING NAY), to:

1. Adopt Policy and Procedure 1201-12 pertaining to City Council Access to Confidential Documents, effective November 17, 2020.
2. Approve the acquisition of commercially available software that would provide secure access to confidential documents, granting access only to specific users, ability to be configured to track individual user access, require users to accept a confidentiality agreement when accessing documents, and restrict the ability to share or print contents, at an estimated cost of \$3,500 per year.

E. Contract Award – Audit of Legal Bills

Report from the Interim City Manager concerning the possibility of entering into a contract for the audit of legal bills.

City Attorney Smith recused himself from discussion because Best, Best & Krieger is his main source of income; left the meeting at 9:12 p.m.

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 NAY), to:

1. Approve, and authorize the Mayor Pro Tem to execute, Contract C20-66, by and between the City of San Clemente and Management Partners, providing for legal audit services, in the amount of \$34,500.
2. Appropriate \$34,500 in Other Professional Services for the audit of legal bills to Account 001-203-43690-000-00000.

City Attorney Smith returned to the meeting at 9:30 p.m.

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

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

Steve Knoblock, communication dated November 17, 2020, concerning audit of legal bills.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

1. **e-Bike Update**

Interim City Manager Sund reported that the issue of e-Bikes will be agendaized for the Beaches, Parks and Recreation (BPR) Commission meeting of December 8, 2020, adding that the Public Safety Committee will consider the topic at a later date; explained that a full report will be presented to the City Council in February 2021.

During the ensuing discussion, Council requested that the BPR Commission and Public Safety Committee conduct a Joint Study Session to discuss the issue of e-Bikes.

Council requested that Staff notify e-Bike vendors in the City of the public meetings.

MOTION BY MAYOR PRO TEM FERGUSON to hear the public comment that was received with regard to e-Bikes. The motion died for lack of a second.

Economic Development Update

Economic Development Officer Lightfoot reported that the website www.covid19.ca.gov provides information on Covid-19; noted the City's website now includes a page entitled "Shop San Clemente First" to promote local businesses.

C. **City Attorney**

None.

D. **Council Members**

1. **Recognition of Chris Hamm, Out-Going Councilmember**

Mayor Pro Tem Ferguson, Councilmember James and Councilmember Ward recognized outgoing Councilmember Hamm with a commendation, a Rick Delanty print and a City Tile and thanked him for his eight years of service to the City of San Clemente.

Councilmember Hamm reflected on his tenure on the City Council, focusing on major accomplishments; extended gratitude to his family and City residents.

Sand Replenishment Update

MOTION BY COUNCILMEMBER JAMES, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to direct Staff to provide a status report on sand replenishment at the Council meeting of December 15, 2020.

Overnight Recreational Vehicle (RV) Parking at Max Berg Park

Councilmember James, with the support of Councilmember Ward, requested that Staff agendize possible methods to address overnight RV parking at Max Berg Park. Council requested that Staff communicate with the Orange County Sheriff's Department concerning this issue.

Means of Honoring Former Mayor Steve Swartz

Councilmember James raised the possibility of Council considering a memorial to honor the late former Mayor Steve Swartz. During discussion, Council noted that it previously discussed the possibility of naming the water-wise pocket park after former Mayor Swartz. Council requested that Staff report back as to whether the pocket park will, in fact, be named after former Mayor Swartz.

Consideration of Pier Lighting

The Council majority directed Staff to agendize the possibility of adding lights to the pier to facilitate night-time surfing and to prepare a report thereon.

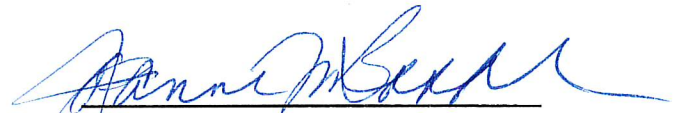
12. **RESOLUTIONS/ORDINANCES**


None.

13. **ADJOURNMENT**

MOTION BY COUNCILMEMBER WARD, SECOND BY MAYOR PRO TEM FERGUSON, CARRIED 4-0, to adjourn at 10:15 p.m. in honor of Hand Crew Firefighters Dylan Van Iwarden and Phi Le, who were critically injured in the Silverado fire in Irvine on October 26, 2020, to an Adjourned Regular Meeting to be held on November 23, 2020 at 6:00 p.m. via teleconference for the purpose of discussing possible censure of a Councilmember.

The next Regular Council Meeting is scheduled to take place on December 1, 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.


CITY CLERK of the City of
San Clemente, California


MAYOR PRO TEM of the City of
San Clemente, California