

CITY OF SAN CLEMENTE

City Council Minutes

Regular City Council Meeting – April 1, 2014

These minutes reflect the order in which items appeared on the meeting agenda and do not necessarily reflect the order in which items were actually considered.

A Regular Meeting of the San Clemente City Council was called to order on April 1, 2014 at 5:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Brown.

PRESENT BAKER, DONCHAK, EVERT, HAMM*, MAYOR BROWN
*Arrived at 5:05 p.m.

ABSENT NONE

STAFF PRESENT Pall Gudgeirsson, City Manager; Jeff Goldfarb, City Attorney; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk

CLOSED SESSION

MOTION BY MAYOR BROWN, SECOND BY COUNCILMEMBER EVERT, CARRIED 4-0, (MAYOR PRO TEM HAMM ABSENT), to recess to Closed Session at 5:00 p.m. to discuss the following:

- A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):

Callan, et al. v. Marlborough Seaview Estates Homeowners Association, et al., OCSC Case No. 01CC07556 (consolidated with Case No. 01CC15381)

- B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):

Daniel Walker, as Trustee for the 1997 Walker Family Trust v. City of San Clemente, Orange County Superior Court Case No. 30-2012-00591239-CU-WM-CJC

- C. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION, pursuant to Government Code Section 54956.9(a):

Capistrano Shores Inc. v. City of San Clemente (OCSC No. 30-2014-00708545-CU-WM-CXC)

In attendance for the Closed Session were all members of the City Council (except that Councilmember Donchak recused herself from participation, and was not in attendance, for Closed Session C). Additionally, the following persons were in attendance for the full Closed Session: City Manager Gudgeirsson, City Attorney Goldfarb, Assistant City Manager Sund, and City Clerk Baade. Human Resources Manager Penrod was in attendance for Closed Session A only. Beaches, Parks and Recreation Director Heider was in attendance for Closed Session B only. Community Development Director Holloway and Public Works Director/City Engineer Cameron were in attendance for Closed Sessions C, D and E only.

MEETING RECONVENED

Council reconvened at 6:12 p.m., with all members present.

INVOCATION

Reverend Patrick Crerar, Rector of St. Clement's-by-the-Sea Episcopal Church, gave the invocation.

PLEDGE OF ALLEGIANCE

Councilmember Evert led the Pledge of Allegiance.

1. SPECIAL PRESENTATIONS

A. Commendation – Jeffrey Goldfarb, City Attorney

Mayor Brown presented a commendation to City Attorney Goldfarb recognizing him for 28 years of service with the City of San Clemente.

B. Avenida La Pata and Camino Del Rio Gap Closure Project Status

Fiona Man and Vincent Gin, representing Orange County Public Works, narrated a PowerPoint presentation entitled “La Pata Extension Project” that addressed the status of the Avenida La Pata and Camino Del Rio Gap Closure Project. A copy of the presentation is on file in the City Clerk’s Department.

C. Pier Bowl Signage

Director of Beaches, Parks, and Recreation Heider narrated a PowerPoint presentation entitled “Pier Bowl Signage” concerning improved signage in the Pier Bowl area. A copy of Ms. Heider’s presentation is on file in the City Clerk’s Department.

D. Presentation of California Park & Recreation Society (CPRS) Award to the Friends of San Clemente Beaches, Parks and Recreation Foundation

Recreation Manager Passow presented an Award of Excellence from the California Park & Recreation Society (CPRS) to the Friends of the Beaches, Parks & Recreation Foundation.

E. CPR Demonstration by Orange County Fire Authority

Representatives of the Orange County Fire Authority provided a demonstration of “Hands Only CPR”.

2. ORAL COMMUNICATIONS (PART 1)**San Clemente Post Office – Presentation of Original Rendering**

Dione Randall, San Clemente, presented the City with an original rendering of the San Clemente Post Office for which her father was the architect.

Southern California Gas Company – Introduction of New Public Affairs Manager

Paul Simonds, Southern California Gas Company, introduced himself as the new Public Affairs Manager for the Gas Company.

San Clemente Dog Park and ASAP (Advanced Surveillance and Protection) Unit

Timothy Brun, San Clemente, commended the City for quality maintenance of the small dog park, but commented that the area near the water fountain gets muddy; recommended that a hard surface be installed at the water fountain; urged that San Clemente Police Services vehicles be equipped with ASAP (Advanced Surveillance and Protection) Units.

Child Safety on School Campus – Drones

Cindy Vallarete, San Clemente, requested that Council adopt an ordinance to ban unmanned aircraft or “drones” from flying over school campuses during school hours; presented a petition, signed by 250 persons, entitled “Enact an Ordinance to Ban Unmanned Aircraft, or ‘Drones’ Over School Campuses, During School Hours”, which is on file at the City Clerk’s Department.

Council requested a tray memo describing efforts underway at the State level and what can be done at the City level to address this issue.

Pirates of Penzance – San Clemente High School Theater Arts

Members of the San Clemente High School Theater Arts publicity crew invited members of the public to attend the Pirates of Penzance production at San Clemente High School.

Restriping of Avenida Vaquero

Tom Marrier, San Clemente, requested that Council reconsider its vote on restriping of Avenida Vaquero; opined that Option D (as described in the Administrative Report that was previously submitted to Council) is the fairest alternative inasmuch as it would widen the bike lane and would retain the center turn lane.

Council requested that Option D be included in the Administrative Report when this item comes back to Council for consideration.

3. MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, 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**

None.

Councilmember Donchak stated for the record that she recused herself from Item C (Chamber of Commerce – Property Negotiations) in this evening's Closed Session.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, CARRIED 5-0, to approve the Consent Calendar, with the removal of Items 6 B(3), F, G and H.

A. **City Council Minutes**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, CARRIED 5-0, to approve the Regular City Council Meeting minutes of March 4, 2014 and the Regular City Council Meeting minutes of March 18, 2014.

B. MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, CARRIED 5-0, to receive and file:

(1) Regular Zoning Administrator Meeting minutes of March 19, 2014.

(2) Regular Beaches, Parks and Recreation Commission Meeting minutes of March 11, 2014.

(4) Regular Planning Commission Meeting minutes of March 19, 2014.

C. **Warrant Register**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, CARRIED 5-0, CARRIED 5-0, to approve Wire Transfer No. 1235, paid on 3/14/14; approve Warrant Nos. 514846 through 515014, paid on 3/14/14, in the amount of \$8,255,745.41; approve Handwrite No. 515161, paid on 3/21/14; approve Wire Transfers Nos. 1236 through 1240, paid on 3/21/14; approve Warrant Nos. 515015 through 515160, paid on 3/21/14, in the amount of \$1,183,945.25; for a total Warrant Register of \$9,439,690.66.

Payroll Register

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, CARRIED 5-0, to approve Warrant Nos. 289 through 295, and Automatic Deposit Advises 14347 through 14649 for the period 3/3/14 through 3/16/14, paid on 3/21/14, in the amount of \$408,158.24; for a total Payroll Register in the amount of \$408,158.24.

D. **Sidewalk/Pedestrian Access Easement and Water Utility Appurtenances Easement - 2350-2358 South El Camino Real**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, CARRIED 5-0, to:

1. Accept the Sidewalk/Pedestrian Access Easement from SC Senior Apartments, L.P. (D-466)
2. Accept the Water Utility Appurtenances Easement from SC Senior Apartments, L.P. (D-467)
3. Authorize the City Clerk to submit the Sidewalk/Pedestrian Access and Water Utility Appurtenances Easement Deeds to the Orange County Recorder for recordation.

E. **Contract Award - Design and Permitting of Recycled Water Site Retrofit of City Parks, Medians and Customer Sites**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, CARRIED 5-0, to approve, and authorize the Mayor to execute, Contract C14-12, by and between the City of San Clemente and RMC Water and Environment, providing for design and permitting of recycled water retrofit of City parks, medians and customer sites, Projects Nos. 13111 and 34201, in the amount of \$250,000.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION**B (3). Regular Planning Commission Study Session Minutes of March 19, 2014.**

Following Councilmember commentary about the importance of monitoring the Zoning Permit streamlining process to ensure that modifications are appropriate and not overreaching, MOTION BY COUNCILMEMBER BAKER, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to receive and file the Regular Planning Commission Study Session minutes of March 19, 2014.

F. Marblehead Residential Coastal Development - Assignment of Certain Subdivision Improvement Obligations to Marblehead Development Partners LLC

Michael Fluchere, San Clemente, questioned and received assurance that the new owner of the residential portion of the Marblehead Coastal property will be subject to the same custom lot height restrictions that were imposed on the existing property owner.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BAKER, CARRIED 5-0, to approve, and authorize the Mayor to execute, the Second Implementation Agreement (Contract C13-04) by and between the City of San Clemente, LV Marblehead LLC, Arch Insurance Company and Marblehead Development Partners LLC concerning the Marblehead Coastal Development.

G. Assignment of Acquisition Agreement for Community Facilities District (CFD) No. 2006-1 – Residential Portion of Marblehead Coastal Development

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BAKER, CARRIED 5-0, to approve, and authorize the Mayor to execute, the Consent to the Agreement (Contract C14-13) between LV Marblehead LLC and Marblehead Development Partners LLC to assign the Acquisition Agreement for CFD No. 2006-1 from LV Marblehead LLC to Marblehead Development Partners LLC.

H. **Assignment of Marblehead Coastal Maintenance Agreement – Residential Portion of Marblehead Coastal Development**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BAKER, CARRIED 5-0, to approve, and authorize the Mayor to execute, the Consent to the Agreement (Contract C14-14) between LV Marblehead LLC and Marblehead Development Partners LLC to assign the Marblehead Coastal Maintenance Agreement (residential obligations) from LV Marblehead LLC to Marblehead Development Partners LLC.

7. **PUBLIC HEARINGS**

A. **North Beach/El Camino Real Parking Lot - 1832 North El Camino Real (Conditional Use Permit 13-478/Minor Cultural Heritage Permit 14-004)**

Public Hearing to consider a request to consider a 33-space beach parking lot and associated accessory structures located at 1832 North El Camino Real within the Commercial (C-2-CZ) zoning district. The legal description is Lots 4-8, of Tract 972 and Assessor's Parcel Number 057-192-04.

Associate Planner Gregg and Public Works Director/City Engineer Cameron narrated a PowerPoint presentation entitled "North Beach, Beach Parking Lot" and responded to Council inquiries. A copy of the PowerPoint presentation is on file in the City Clerk Department.

Mayor Brown opened the Public Hearing.

Brad Malamud, San Clemente, asserted that the \$150,000, that is allocated for project design costs, needs to be returned immediately to the Beach Parking Fund, and can only be spent if the City appeals the lawsuit and prevails; opined that the subject project is a waste of funds because a parking shortage does not exist in North Beach; expressed willingness to meet with the City Attorney in an effort to resolve the beach parking lawsuit.

Don Slater, speaking on behalf of the North Beach Community Association, related that the El Camino Real parking lot, as designed, is necessary for the future function of North Beach. Speaking as a private citizen, Mr. Slater stated that insufficient parking exists in North Beach to accommodate area residents.

Gene Gilbert, San Clemente, spoke in support of the North Beach/El Camino Real parking lot plan; suggested businesses will benefit from the parking lot as well as beach users.

George Gregory, San Clemente, spoke in support of the El Camino Real parking lot; suggested that 1) a bus stop/turnout be added to El Camino Real south of Avenida Pico (and that the bus stop in front of 7-Eleven be omitted), 2) that an equipment room be added to the Ole Hanson Beach Club, 3) that the arch be relocated to the triangle area, and 4) that 12 parallel parking spaces be removed along Calle Deshecha.

Ricardo Nicol, San Clemente, opined that the City limited the consultant's design latitude which consequently resulted in a project design that closely resembles the original design; urged that the parking lot be revised to 1) reduce the cost, 2) devote 60 feet, instead of 85 feet, to parking, 3) delete the portal and other unnecessary structures, 4) amend the consultant's contract to delete language that limits its design creativity, and 5) create a citizens committee to assist in developing a project design.

There being no others desiring to speak to this issue, the Public Hearing was closed.

Following deliberations, MOTION BY MAYOR BROWN, SECOND BY COUNCILMEMBER EVERT, CARRIED 4-1 (COUNCILMEMBER BAKER VOTING NOE), to:

1. Approve a supplemental appropriation in the amount of \$835,000 to Account 037-867-45300 in the Developers Improvement Fund (Commercial Improvements). If the Walker v. City of San Clemente lawsuit is appealed and the City is successful, the Public Facilities Construction Fee Fund (Beach Parking Reserve) will reimburse funds advanced for final design and construction.
2. Adopt Resolution No. 14-09 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT 13-478 AND MINOR CULTURAL HERITAGE PERMIT 14-004, NORTH BEACH/EL CAMINO REAL, BEACH PARKING LOT, A REQUEST TO CONSIDER THE CONSTRUCTION OF A BEACH PARKING LOT LOCATED AT 1832 NORTH EL CAMINO REAL, with the following modifications:
 - a. Reference to the number of parking spaces is to be eliminated.
 - b. A 5th condition of approval is to be added to read as follows:

“The Applicant shall maintain canopy trees in a manner that provides coverage and encourages the canopy to grow to provide shade. The Applicant shall avoid pruning trees to the point where they do not grow into a canopy tree.”

Action continued on next page

3. Provide direction to Staff and the City's consultant as follows: 1) Consider value engineering; 2) address circulation alternatives (including one-way versus two-way circulation and the possibility of a bus turnout) to help ensure that the parking lot layout represents the best design possible; 3) that further consideration be given to the project's integration with neighboring properties and the rest of the parking lot; and 4) that the project budget be changed from \$835,000 to an amount not to exceed \$835,000.

Council requested that the issue of sidewalk improvements in the North Beach area be agendized for a future meeting.

MEETING RECESSED

Council recessed at 8:55 p.m. and reconvened at 9:10 p.m. with all members present.

8. **UNFINISHED BUSINESS**

None.

9. **NEW BUSINESS**

A. **Amended Pension Contract with the California Public Employees' Retirement System (CalPERS)**

Report from the Assistant City Manager concerning the possibility of transitioning the City's pension plan from Great-West Retirement Services to CalPERS.

Assistant City Manager Sund reviewed the contents of the Administrative Report and, together with City Manager Gudgeirsson, Mary Beth Redding (Assistant Vice President of Bartel Associates) and Kerry Worgan (Senior Pension Actuary at CalPERS), responded to Council inquiries.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER BAKER, CARRIED 5-0, to:

1. Adopt Resolution No. 14-10 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, OF INTENTION TO APPROVE AN AMENDMENT TO THE CONTRACT BETWEEN THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE.
2. Introduce Ordinance No. 1578 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

B. Proposed Definition of "Smoking" for Public Spaces in San Clemente

Report from the Beaches, Parks and Recreation Director concerning a City-initiated proposal to amend the Code of the City of San Clemente to amend the definition of "smoking" to include electronic cigarettes and marijuana.

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

During the ensuing deliberations, Council discussed the following:

- Evidence that electronic cigarettes may pose fewer health risks than traditional cigarettes.
- Fact that electronic cigarettes do not result in cigarette butt litter.
- Lack of proof that second-hand vapors are harmful.
- Concern that persons using electronic cigarettes in public places could serve as a negative example for children, especially since young people may not be able to differentiate between electronic cigarettes and traditional cigarettes.

MOTION BY COUNCILMEMBER EVERT, SECOND BY COUNCILMEMBER DONCHAK, **FAILED 2-3** (COUNCILMEMBER BAKER, MAYOR PRO TEM HAMM AND MAYOR BROWN VOTING NOE), to introduce Ordinance No. 1579 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTER 8.64 OF THE SAN CLEMENTE MUNICIPAL CODE AMENDING 8.64.020 DEFINITIONS.

By virtue of the failure of the preceding motion, Council determined to NOT introduce an ordinance to amend the Code of the City of San Clemente to expand the definition of “smoking” to include electronic cigarettes and marijuana.

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

None.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

City Manager Gudgeirsson introduced and welcomed Lt. Moody, the new Chief of Police Services for the City of San Clemente; reported on his attendance at the Courtney’s Sandcastle sensory garden bidder’s conference.

C. **City Attorney**

City Attorney Goldfarb thanked the City Council for his tenure as Assistant City Attorney and City Attorney with the City of San Clemente.

D. **Council Members**

(1) **Selection of City Representative - MWDOC Board and Member Agency Elected Officials' Forum**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR PRO TEM HAMM, CARRIED 5-0, to appoint Councilmember Baker as the City representative to the MWDOC Board and Member Agency Elected Officials Forum on April 3, 2014.

Mayor's Walk – Marblehead Coastal Commercial Development

Mayor Brown reported that the Mayor's Walk at the Marblehead Coastal commercial development property on March 22, 2014 was well attended.

Meals on Wheels

Mayor Brown stated that he participated in delivering Meals on Wheels to the senior community and thanked the Dorothy Visser Senior Center for inviting him to participate.

Groundbreaking Event – Avenida La Pata Extension

Mayor Brown invited the public to attend the Avenida La Pata extension groundbreaking ceremony on Friday, April 4, 2014 at 10:00 a.m.

Avenida Serra Affordable Housing Project

Councilmember Donchak reported on her attendance at the Avenida Serra Affordable Housing groundbreaking ceremony on March 31, 2014; noted the importance of ensuring that the community is not disrupted as a result of the construction.

Coastal Animal Services Authority (CASA)

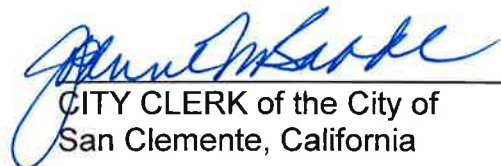
Councilmember Donchak requested that the CASA General Manager provide a status report at an upcoming Council meeting relative to CASA operations and enforcement actions as a result of the new rules with regard to dogs in parks.


12. **RESOLUTIONS/ORDINANCES**

None.

13. **ADJOURNMENT**

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER EVERT, CARRIED 5-0, to adjourn at 10:15 p.m. The next Regular Council Meeting will be held on April 15, 2014 in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California. Closed Session items will be considered at 5:00 p.m. The Regular Business Meeting will commence at 6:00 p.m.


CITY CLERK of the City of
San Clemente, California


MAYOR of the City of
San Clemente, California