

Council Chamber, Easley Building,  
San Clemente, California,  
June 5th, 1936.

The regular meeting of the City Council of the City of San Clemente was held in the Council Chamber, Easley Building, San Clemente, California, Friday, June 5th, 1936, at 8.00 o'clock, p.m. - Mayor Dan Mulherron in the Chair.

The following was the state of the roll-call:  
PRESENT: COUNCILMEN: Smith, Fate, Coe and Mulherron,  
ABSENT : COUNCILMEN: Kinney.

The Minutes of the last regular meeting held Friday, May 15th, 1936, were read and approved as read:

WRITTEN  
COMMUNICATIONS.

Communication from Charles Clay regarding payment for Gasoline Pump supplied by him; was read and ordered filed.

Communication from the American Legion Auxiliary thanking the Council for allowing them the use of the Council Chamber for their meetings; was read and ordered filed.

Communication from Mr. H. J. Esselman, Deputy Procurement Officer, 12th California District, Room 222, Broadway Building, San Diego, enclosing copy of Contract for Water Service at State Park in quintuple, ER-TPS-03-11261, for City to execute; was read and referred to the Committee of the Whole Council.

Communication from Mr. Frank W. Parsons, City, regarding Concessions of City-owned beach; was read and ordered filed.

Communication from Aetna Surety Company stating that a registered warrant was not acceptable to them as all premiums for Officials Bonds were due and payable at the time bonds effective in cash; was read and ordered filed. The Clerk reported that the Bank of America had agreed to take care of this warrant.

INFORMATION &  
PROCEDURE TO  
JOIN UP IN THE  
METROPOLITAN  
WATER DISTRICT.

Communication from the Metropolitan Water District, 306 West Third Street, Los Angeles, replying to our request for information and procedure to get into the District; was read and referred to "New Business". Copy of this letter is attached to these Minutes and made a part hereof. (See after Committee of Whole Council's Report - Page No. 956.)

Communication from the Parent Teachers Association requesting the City to place a Life Guard on duty at the Beach on June 9th on the occasion of the School Childrens Party; was read and referred to the Committee of the Whole Council.

Communication from Thos. F. Murphine, Attorney at Law, addressed to Mr. B. Z. McKinney, City Attorney, making a formal refusal to the City Attorney's demand on behalf of the City for the return of \$100.00 paid him in Suit No. 26127 of the Superior Court, Orange County, in re settlement of action City of San Clemente vs John O. Forster, et al.; also outlining briefly the facts of the case for the City Attorney's information. (Copy of this letter will be found on Page No. 958 of these Minutes.)

REPORTS OF  
COMMISSIONERS &  
OFFICIALS.

Report of the Activities of the Social Club for month of May, 1936, submitted by F. A. Neddermeyer, was read and ordered filed.

Report of the Activities of the various City's Departments for month of May, submitted by Clyde M. Baxter, Superintendent of Public Works; was read and ordered filed.

Report of the Water Department for month of May, submitted by Roland Peterson; was read and ordered filed.

UNFINISHED  
BUSINESS.

As it was felt desirable, in order to retain our rights and not let them die out, that the two plants at San Juan Capistrano should be operated at intervals, the Superintendent of Public Works was instructed to get in touch with the San Diego Consolidated Gas and Electric Company to see if the "stand-by" charge of \$365.00 per year on each of the two plants could not be eliminated and the City be charged only for actual juice consumed.

RETENTION OF  
RIGHTS S.J.C.  
WATER PLANT.

CITY ATTORNEY'S  
OPINION AS TO  
CITY'S RIGHTS TO  
LEASE CONCESSIONS  
ON BEACH TO  
INDIVIDUALS.

The City Attorney, Mr. B. Z. McKinney submitted a written opinion as to the City's rights to lease concessions on beach to individuals. Following is copy of letter.

" City Council of San Clemente,  
" San Clemente, California.

June 2, 1936.

" Gentlemen,

" Pursuant to your request for an opinion as to  
" whether the City of San Clemente has the legal right to  
" lease certain portions of its beach to individuals, to be  
" used for business purposes, it is my opinion that the City  
" has such right.

" The deed conveying the beach property to the  
" City was executed by the Merchants National Trust & Savings  
" Bank of Los Angeles on November 17th, 1928. The said deed  
" grants outright to the City the property now known as the  
" Beach Property belonging to the City of San Clemente, there  
" being an insertion in the deed that "the property conveyed  
" shall be used for pleasure purposes only and shall not be  
" used for any business purpose whatsoever".

" There is no forfeiture clause contained in  
" said deed providing that in the event of a violation of this  
" restriction the land conveyed to the City should revert to  
" the grantor's successors or assigns.

" In my opinion the restriction is no more than  
" a personal covenant existing between the grantor and the  
" City as to the use of the property. I do not believe anyone  
" could enforce the covenant other than the Merchants National  
" Trust and Savings Bank of Los Angeles, a Corporation, grantor  
" in said deed.

" The Bank of America National Trust and  
" Savings Association, as I understand it, is the successor in  
" interest to the Merchants National Trust and Savings Bank  
" of Los Angeles. However, as the right to enforce the  
" covenant as hereinbefore stated was a personal right it is  
" extremely doubtful if the Bank of America succeeded to the  
" right of the Merchants National Trust and Savings Bank to  
" enforce this covenant.

CITY ATTORNEY'S " The case of Fitzgerald vs the County of Modoc, 164  
 OPINION AS TO "California, page 439, was a case almost identical with the  
 CITY'S RIGHT TO "deed in question. There the County of Modoc was conveyed  
 LEASE CONCESSIONS"by grant deed certain land " to be used as and for a county  
 ON BEACH TO " "high school grounds and premises." The Court held that  
 INDIVIDUALS FOR "since the use of the property was not a condition subsequent  
 BUSINESS PURPOSES"and there was no forfeiture clause inserted in the deed,  
 continued - "that the County's grantee took the property and held valid  
 "title thereto, free from such restrictions, and denied the  
 "grantor of the County a right to relief against the county's  
 "grantee.

" To the same effect are the cases of Weller v. Brown,  
 "160 Cal. at page 515; and Martin v. City of Stockton, 39  
 "Cal. App. 552.

" In conclusion, it is my opinion that the City of San  
 " Clemente can safely lease such portions of the beach as it  
 "desires for business purposes. The City's grantor, the  
 "Merchants National Trust and Savings Bank of Los Angeles,  
 "would have a right to enjoin the City from such use, or to  
 "recover from it damages for such use, if the Merchants  
 "National Trust and Savings Bank were in existence. Since  
 "it is not in existence it is extremely doubtful if the Bank  
 "of America, its successor, has the same right.

" In any event any damages that could be shown in my  
 "opinion would be nominal and the City would be taking very  
 "little, if any, liability in leasing the property.

" Respectfully submitted,

" (Sgd) B. Z. MCKINNEY,  
 " City Attorney.

\* \* \* \* \*

VERBAL OPINION  
 OF CITY ATTORNEY  
 AS TO PIER  
 CONCESSIONS.

Regarding concessions on the Pier, the City Attorney  
 stated there was quite a different angle. The Deed  
 conveying the Pier to the City had teeth in it, which  
 provided that if the Pier was used for business purposes of  
 any nature whatsoever, with the exception of bait and fishing  
 tackle, the Pier would revert to its original owners.

COMMITTEE OF THE  
 WHOLE COUNCIL'S  
 REPORT.

The Committee of the Whole Council's Report,  
 Councilman Henry A. Fate, Chairman, was read and on Motion  
 of Councilman Fate, seconded by Councilman Coe, was accepted  
 and adopted as the action of the Council.

On roll-call the following was the stated vote, to-wit:

AYES : COUNCILMEN: Fate, Coe, Smith and Mulherron,

NOES : COUNCILMEN: None,

ABSENT: COUNCILMEN: Kinney.

The motion was declared carried.

Copy of said report is attached to these Minutes and  
 made a part hereof.

PAYING BILLS.

Moved by Councilman Fate, seconded by Councilman Coe,  
 that the following bills, as audited, be paid, as, if and when  
 funds are available.

On roll-call the following was the stated vote, to-wit:

AYES : COUNCILMEN: Fate, Coe, Smith and Mulherron,

NOES : COUNCILMEN: None,

ABSENT: COUNCILMEN: Kinney.

The Motion was declared carried.

PAYING BILLS - Warrant  
continued. Number.

			\$
	1084	William Holmes	80.00
	1085	Clyde M. Baxter	75.00
	1086	Verne D. Bailey	55.00
	1087	B. H. Latham	50.00
	1088	B. Z. McKinney	40.00
	1089	Fred S. Warner	50.00
	1090	Wendell B. Lovell	50.00
	1091	J. Carlos Decker	50.00
	1092	Henry L. Moore	5.00
	1093	Jas. B. Hopkins	50.00
	1094	C. C. Chambers	4.00
	1095	Roland Peterson	67.50
	1096	Harry Williams	3.00
Reg'd	1097	John F. Killen	159.50
No.	1098	Julius Becker	52.50
1113a	1099	L. M. Strang	50.00
	1100	George A. Wilcox	48.00
	1101	Klyde T. Chalk	3.00
	1102	Harvey Davis	3.00
	1103	George Larson	18.00
	1104	Everett Bewley	2.75
	1105	Lester T. Abell	60.00
	1106	C. O. Eaton	66.07
	1107	Floyd Ray	75.00
	1108	Robert Smith	52.50
	1109	F. A. Neddermeyer	50.00
	1110	Eunice Templin	5.00
	1111	A. Simmen	15.00
	1112	William A. Ayer	20.50
		<hr/>	
		TOTAL WAGES LAST HALF MAY, 1936.....	\$1,260.32
	1113	Petty Cash	38.43
1114	1114	Adairs Grocery	6.98
1115	1115	V. B. Anderson Company	33.21
1116	1116	Brown Bevis Company	14.49
1117	1117	Coastline Dispatch	32.50
1118	1118	Coast Hiway Garage	39.75
1119	1119	Crenshaw & Company	75.00
1120	1120	Corcoran Paper Company	40.44
1121	1121	Crane Company	70.10
1122	1122	Dr. Paul Esslinger	9.00
1123	1123	Fairbanks Morse Co	3.29
1124	1124	General Paint Company	123.25
1125	1125	Dr. Halverson	4.00
1126	1126	Heinecke Lumber Yard	2.74
1127	1127	Heinecke Lumber Yard	104.81
1128	1128	Hockaday, Harlow & Phillips	32.27
1129	1129	Hockaday, Harlow & Phillips	4.55
1130	1130	El. L. Holloway	5.00
1131	1131	Louis Legakes	25.00
1132	1132	Los Angeles Rubber Stamp Company	8.76
1133	1133	Orange County Auto Parts	29.79
1134	1134	Orange County Auto Parts	4.12
1135	1135	Motor Freight Terminal Company	12.89
1136	1136	Rapid Blue Print Company	13.22
1137	1137	Royal Indemnity Company	30.00
1138	1138	O. R. Robertson	65.40
1139	1139	San Clemente Super Service Garage	43.70
1140	1140	Schwabacher Frey Company	5.77
1141	1141	Standard Oil Company	176.10
1142	1142	So. California Telephone Company	9.05

PAYING BILLS  
continued -

Registered Warrant  
Number. Number.

\$

1143	1143	Strang Brothers	25.00
1144	1144	Strang Brothers	4.00
1145	1145	Village Press	28.33
1146	1146	Western Metal Supply Company	114.13
1147	1147	Western Metal Supply Company	75.11
1148	1148	O. J. Madison	37.87
1149	1149	O. J. Madison	7.75
1150	1150	Southern Counties Gas Company	16.80
1151	1151	San Diego Electric Company	2.71
1152	1152	San Diego Electric Company	594.31
1153	1153	San Diego Electric Company	19.34
1154	1154	Carlisle & Company	33.89

TOTAL WARRANTS - ACTIVE PUBLIC FUNDS.....\$ 3,292.15

1155. San Diego Electric Company \$ 554.81. L. Fund.

TOTAL ALL WARRANTS ISSUED JUNE 5th, 1936..... \$ 3,843.96.

NEW BUSINESS.

METROPOLITAN  
WATER DISTRICT.

The communication from the Metropolitan Water District was discussed at some length but no definite action was taken on the matter. (Copy of this communication is attached to these Minutes and made a part hereof. See page No. 956.)

GARBAGE  
COLLECTION.

The question of garbage collection and disposal was taken up and the Clerk was authorized and instructed to call for sealed bids for this service on a monthly bases. Sealed bids to be received and opened at next Council Meeting, Friday June 19th, 1936, at 8.00 o'clock, p.m. - The new Contract to take effect as and at July 1st, 1936 the beginning of the City's fiscal year.

RESOLUTIONS.

Upon Motion of Councilman Fate, seconded by Councilman Coe, RESOLUTION NO. 274, BEING A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE REQUESTING THE ALLOCATION OF CERTAIN MONEY FROM THE ORANGE COUNTY GASOLINE TAX FUND; having been regularly introduced, was passed and adopted by the following stated vote, to-wit:  
 AYES : COUNCILMEN: Fate, Coe, Smith and Mulherron,  
 NOES : COUNCILMEN: None,  
 ABSENT: COUNCILMEN: Kinney.

The Resolution having received the required number of votes was declared adopted.

ADJOURNMENT.

Moved by Councilman Smith, seconded by Councilman Coe, and carried, that the meeting adjourn.

*William Holmes*

City Clerk and ex-officio  
Clerk of the City Council.

APPROVED: JUNE 19th, 1936.

*Wm. Mulherron*  
Mayor and President of the  
City Council.

COMMITTEE OF THE WHOLE COUNCIL'S  
REPORT.- JUNE 5th, 1936.

The Honorable Mayor and City Council,  
City of San Clemente.

Gentlemen,

We, your Committee of the Whole Council, who have had under consideration the matters set forth below, respectfully make the following recommendations.

1. That a flat rate of \$10.00 per month be charged Louis Legakes, Travel Inn Cafe, for water, effective May 1st, 1936.
2. That Mayor Dan Mulherron be appointed on the Architectural Committee of the City, pursuant to Ordinance No. 85.
3. That the water rate for the Monroe Thurman property be set at \$2.50 per month, effective June 1st, 1936.
4. That the City Clerk be authorized and instructed to execute the Contract between the Treasury Department, Procurement Division, for the supply of water to the Camp at the State Park San Clemente, and that they be charged a flat rate of \$1.00 per 1,000 cubic feet for water consumed, same to be effective April 16th, 1936.
5. That the request of the Parent Teachers Association for a Life Guard to be on duty on the Beach June 9th, on the occasion of the School Childrens party, be granted.
6. That the following old water balances carried on the City's Water Ledger be written off:
 

W-15.	Ole Hanson	- Residence	-	\$	268.75-
W-95.	Ted Hanson	- Ranch	-		418.00 *
W-143.	Hospital Building			-	120.00 *
W-144.	Ralph Swigart - Strang-Swigart Building				35.00 -

Respectfully submitted,

COMMITTEE OF THE WHOLE COUNCIL,

(Sgd) HENRY A. FATE,

Chairman.

Approved and adopted June 5th, 1936.