

# CITY OF SAN CLEMENTE

## City Council Minutes

### Regular Meeting - September 5, 2006

A Regular Meeting of the San Clemente City Council was called to order on September 5, 2006 at 6:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California.

**PRESENT**                      ANDERSON, DAHL, KNOBLOCK, RITSCHEL\*, MAYOR  
EGGLESTON

\*Arrived at 6:10 p.m.

**ABSENT**                      NONE

**STAFF PRESENT**              George Scarborough, City Manager; Jeff Oderman, City  
Attorney; Myrna Erway, City Clerk; Joanne Baade, Deputy  
City Clerk

\* \* \*

### **CLOSED SESSION**

City Attorney Oderman announced that Closed Session Item B is a continuation of anticipated litigation items that were considered at the August 15, 2006 Council meeting, i.e., Duke's Griddle and Grill (204 S. El Camino Real) and Dwinnell's Landscape Materials (1523 Avenida de la Estrella).

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER ANDERSON, CARRIED 4-0, to recess to Closed Session at 6:03 p.m. to discuss the following:

- A. CONFERENCE WITH LABOR NEGOTIATOR, pursuant to Government Code Section 54957.6:

Agency Representative: Pall Gudgeirsson, Assistant City Manager

Employee Organizations: San Clemente City Employees Association, Management Employees, Mid-Management Employees and Confidential Employees.

*Closed Session items continued on next page*

B. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Initiation of litigation pursuant to Government Code Section 54956.9(c): Two Potential Cases

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

Name of Case: Callan v. City of San Clemente, et al., OCSC Case No. 01CC07556.

City Manager Scarborough, Assistant City Manager Gudgeirsson, City Attorney Oderman and City Clerk Erway were present during the entire Closed Session. Human Resources Manager Penrod was present during Closed Session Item A, and Community Development Director Holloway and Code Enforcement Officer Smith were present during Closed Session Item B.

**MEETING RECONVENED**

Council reconvened at 7:00 p.m., with all members present.

**INVOCATION**

David Keehn, Orange County Fire Authority Chaplain, gave the invocation.

**PLEDGE OF ALLEGIANCE**

Peter Glynn, of Boy Scout Troop No. 409, led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

A. **Presentation of Commendation - Karen Lucy, City Dance Instructor (25<sup>th</sup> Anniversary with the City)**

Mayor Eggleston presented a Commendation to Karen Lucy, City Dance Instructor, in recognition of 25 years of outstanding service to San Clemente dance participants.

B. **Presentation of Commendation - Peter Benjamin Glynn, Eagle Scout**

Mayor Eggleston presented a Commendation to Peter Benjamin Glynn in recognition of achieving the prestigious rank of Eagle Scout.

2. MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 5-0, to waive reading in full of all Resolutions and Ordinances.

3. **CONSIDERATION OF AGENDIZING ITEMS REQUIRING IMMEDIATE ACTION**

**Written Report Describing Measures Taken to Alleviate the Condition Which Led to the Adoption of Urgency Ordinance No. 1313**

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER RITSCHER to add the following item to the agenda (New Business Item 8-B) since there is a need to take immediate action and the need for action came to the attention of the City subsequent to the agenda being posted:

**Adoption and Issuance of Written Report Describing Measures taken to Alleviate the Condition Which Led to the Adoption of Urgency Ordinance No. 1313, pursuant to Government Code Section 65858(d).**

City Clerk Erway explained that Government Code Section 65858(d) requires that a written report be issued 10 days prior to the expiration of a moratorium; explained that the Shorecliffs moratorium is scheduled to expire on September 21, 2006 and, hence, Staff is requesting that the written report be agendized for this meeting.

City Attorney Oderman reported that the Shorecliffs height overlay ordinance is in limbo pending the City Clerk's determination as to whether or not the referendum petition, which was filed with the City on August 23, 2006, received a sufficient number of valid signatures; stated that, as a result, the moratorium ordinance that was to expire as of the date that the height overlay district ordinance became effective, has a similar status; stated that if the City Clerk determines that the referendum petition received a sufficient number of valid signatures to qualify the referendum petition, Council would have the option to either rescind the height district ordinance or submit the measure to the City's voters; stated that approval of a written report, describing the efforts taken toward resolving the issues that gave rise to the moratorium, at least 10 days prior to the expiration of Ordinance No. 1313, would retain Council's ability to possibly extend the moratorium until the measure is determined by the electorate; stated that because of the uncertain status of the moratorium and height district overlay ordinances, Staff is requesting that this issue be agendized for this meeting.

During the course of discussion, Staff stressed that if the subject item is agendized, Council would only determine if the written report is factual. Council would not be determining whether or not to extend the moratorium.

THE MOTION ON THE FLOOR WAS VOTED ON AND **FAILED** (COUNCILMEMBER KNOBLOCK AND MAYOR PRO TEM DAHL VOTING NOE). *(This motion required a 2/3's vote to carry.)*

*\*Note: Later in the meeting, Council directed Staff to agendize, for the Council meeting of September 19, 2006, the possibility of extending the Shorecliffs moratorium (See Page 13). Additionally, Council adjourned to an Adjourned Regular Meeting to be held on September 11, 2006 for the purpose of considering the written report (See Page 14).*

#### 4. **ORAL COMMUNICATIONS (PART ONE)**

##### **Residential Development at 250 Avenida Esplanade**

Patricia Sturges, San Clemente, stated that she represents the people at T Street beach; spoke in opposition to the development project at 250 Esplanade; asserted that the project, which is being built on a half lot, will ruin the ambience of the neighborhood; urged that the project be reduced to a single-story residence.

**Beach Access Improvements from Linda Lane Park**

Bob Schoner, San Clemente, voiced concern with the proposed beach access improvements from Linda Lane Park due to his belief that the plans are flawed; recommended that the City either capture the nuisance water leaving several drainage pipes as it enters the swale leading to the box culvert and divert it to a new drainage pipe that runs directly under a new 8' wide sidewalk, or trap the nuisance runoff as it enters the swale and pump the water into the sewer system; requested that Council delay the beach access improvements from Phase I to Phase II to allow Staff to redesign the project and obtain approval from various agencies.

It was agreed that City Manager Scarborough will meet with Mr. Schoner concerning the situation and provide a follow-up report to Council.

5. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve the Consent Calendar with the removal of Items B(4) and D.

A. **City Council Minutes**

None.

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

- (1) Zoning Administrator meeting minutes of August 16, 2006.
- (2) Parks and Recreation Commission minutes of July 11, 2006.
- (3) Human Affairs Committee minutes of June 14, 2006.

C. **Warrant Register**

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve Wire Transfers Nos. 405 and 406 and Warrant Nos. 777662 through 777833 for the period 7-24-06 through 7-28-06 in the amount of \$1,053,826.83; approve Warrant Nos. 777834 through 778001 for the period 7-31-06 through 8-4-06 in the amount of \$365,719.55; approve Wire Transfers Nos. 407 and 408 and Warrant Nos. 778002 through 778167 for the period 8-7-06 through 8-11-06 in the amount of \$1,611,222.22; approve Warrant Nos. 778168 through 778386 for the period 8-14-06 through 8-18-06 in the amount of \$2,065,069.02; for a total Warrant Register of \$5,095,837.62.

**Payroll Register**

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve Warrant Nos. 318080 through 318146, Automatic Deposit Advises 141855 through 142096, for the period 7-17-06 through 7-30-06 in the amount of \$401,895.90; approve Warrant Nos. 318147 through 318220, Automatic Deposit Advises 142097 through 142337, for the period 7-31-06 through 8-13-06 in the amount of \$388,864.32; for a total Payroll Register of \$790,760.22.

E. **Contract Award - Cyprus Shores Pump Station Rehabilitation (Project No. 14201) and La Pata Pump Station Rehabilitation (Project No. 15203)**

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to:

1. Approve the plans and specifications for the Cyprus Shores Pump Station Rehabilitation Project and La Pata Pump Station Rehabilitation Project.
2. Approve, and authorize the Mayor to execute, Contract C06-31 by and between the City of San Clemente and Gantry Constructors, Inc., relating to the rehabilitation of the Cyprus Shores Pump Station (Project No. 14201) and La Pata Pump Station (Project No. 15203) in the amount of \$1,056,000.
3. Approve a supplemental appropriation of \$500,000 to Account 052-476-45300-000-15203, Sewer Fund Connection Fee Reserve, Improvements Other Than Buildings, within the Sewer Fund for La Pata Pump Station Rehabilitation, Project No. 15203.

F. **Contract Award - Annual Street Slurry Sealing Program**

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to:

1. Approve the specifications for the Annual Street Slurry Sealing Program.
2. Approve, and authorize the Mayor to execute, Contract C06-42 by and between the City of San Clemente and Bond Blacktop, relating to the Annual Street Slurry Sealing Program, in the amount of \$206,160.50.

G. **Communications Site Lease Renewal - Medix Ambulance Service (Revenue No. 36296)**

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve, and authorize the Mayor to execute, a Communications Site Lease (Contract C94-66), by and between the City of San Clemente and Medix Ambulance Service, to enter into another Lease Agreement for two years at a monthly rental rate of \$466.65 and authorize the City Manager to approve future amendments.

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

B(4). **Planning Commission Minutes of August 16, 2006.**

In response to Council inquiry, Community Development Director Holloway summarized the Planning Commission's deliberations concerning the Selma's Pizzeria application (Item 9-G on the Planning Commission minutes of August 16, 2006); noted that the Commission focused on parking and signage.

During the course of discussion, Staff noted that 1) Signage will be provided in the rear parking lot that directs patrons to both of the business's entrances; 2) Signage will be installed at the entrance to the parking lot indicating that it is for pizzeria parking; and 3) The Applicant has agreed to enter into a written agreement with the City to require that signage be installed inside the restaurant (near the front entrance) that indicates that parking is available in the rear.

MOTION BY MAYOR EGGLESTON, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to receive and file the Planning Commission minutes of August 16, 2006.



D. **Property Rental Agreement with The Friends of the San Clemente Beaches, Parks and Recreation Foundation - Cyber Café at 1030 Calle Negocio**

Bill Thomas advised that the Cyber Café is a program of the Friends of the San Clemente Beaches, Parks and Recreation Foundation; explained that the purpose of Cyber Café is to provide computer training classes for senior citizens.

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve, and authorize the Mayor to execute, a Property Rental Agreement by and between the City of San Clemente and The Friends of the San Clemente Beaches, Parks and Recreation Foundation, relating to the rental of a portion of the City property located at 1030 Calle Negocio.

6. **PUBLIC HEARINGS**

None.

7. **UNFINISHED BUSINESS**

None.

8. **NEW BUSINESS**

A. **Exclusive Negotiation Agreement with Lab Holding, LLC (North Beach Development)**

Report from the Community Development Director concerning the possibility of entering into an exclusive negotiation agreement with Lab Holding, LLC, to partner with the City to create catalytic development on City-owned property in North Beach.

Community Development Director Holloway reviewed the contents of the Administrative Report.

Shaheen Sadeghi, Principal of Lab Holding, LLC, expressed appreciation for the opportunity and conveyed that Lab Holding is looking forward to getting started.

George Gregory, San Clemente, opined that North Beach needs parking more than retail businesses; voiced concern that the proposal provides for one winner, as opposed to many small winners; urged that Council reconsider its decision.

In response to Council inquiry, City Attorney Oderman noted that the negotiating agreement before Council does not provide for a transfer of the work product to the City in the event of a default; noted that site-specific work would be of no further use to the Applicant if the process does not result in a definitive contract due to default or other reason; explained, however, that architectural and engineering drawings are owned by the architects and they may, or may not, be willing to waive their rights to their work product; noted the possibility of negotiating a provision whereby the developer will assign to the City, at no consideration, their position with regard to work completed by third parties.

Shaheen Sadeghi responded that Lab Holdings has not experienced success in the past in obtaining architectural plans since they are owned by the architects; noted that the transfer of architectural/engineering plans is a third-party issue; pointed out that the issue before Council is an exclusive negotiating agreement and not a development agreement.

In response to Council inquiry, Mr. Sadeghi indicated that he does not foresee a problem in transferring surveys, EIR reports and other site-specific reports to the City, or to assigning to the City its position with regard to work done by third parties, but added that he would like to check with his counsel in this regard.

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY COUNCILMEMBER ANDERSON, CARRIED 5-0, to approve, and authorize the Mayor to execute, Contract C06-43, an Exclusive Negotiating Agreement by and between the City of San Clemente and Lab Holding, LLC, relating to the development of City-owned property in North Beach, **subject to the City Attorney and Lab Holding's attorney agreeing to language that would require that, in the event the agreement doesn't go forward, that plans, site-specific reports and design work, in essence, be assigned to the City, so that the City would be able to work with the architects and engineers.**

9. **ORAL COMMUNICATIONS (PART TWO)**

None.

10. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

None.

C. **City Attorney**

City Attorney Oderman advised that no reportable actions were taken during this evening's Closed Session.

D. **Council Members**

- (1) **Council Position on Orange County Division, California League of Cities Issues.**

None.

- (2) **Council Position on Legislative Issues.**

None.

- (3) **Orange County Fire Authority Status Update.**

Chief Hawkins reported on OCFA deployments.

- (4) **San Clemente-Dana Point Animal Services Authority.**

Mayor Pro Tem Dahl reported on animals available for adoption at the San Clemente-Dana Point Animal Shelter and expressed gratitude to the shelter's volunteers, staff and veterinarians; noted that the Tail of Two Cities will be held at the Ritz Carlton on September 29, 2006.

- (5) **Transportation Corridor Agencies Status Report.**

None.

(6) **Councilmember Items.**

**Extension of Bus Service Into Talega**

Councilmember Ritschel reported that the OCTA Board approved the extension of bus service into Talega.

**Process for Filing Criminal Actions**

Council requested that the City Attorney prepare a report for the October 3, 2006 Council meeting relative to the process for filing criminal actions so that Council can determine if refinements are warranted.

**Shorecliffs Moratorium (Direction to Agendize for the Council Meeting of September 19, 2006)**

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 3-2 (COUNCILMEMBER KNOBLOCK AND MAYOR PRO TEM DAHL VOTING NOE), to agendize consideration of extending the Shorecliffs moratorium for the September 19, 2006 Council meeting.

11. **RESOLUTIONS/ORDINANCES**

A. **Ordinance No. 1321 (Second Reading) - Street-Facing Setbacks for Garages and Carports for Mobile Home Neighborhoods**

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY MAYOR PRO TEM DAHL, CARRIED 5-0, to adopt Ordinance No. 1321 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTER 17 OF THE SAN CLEMENTE MUNICIPAL CODE, RELATING TO STREET-FACING SETBACKS FOR GARAGES AND CARPORTS FOR MOBILE HOME NEIGHBORHOODS (A PORTION OF ZONING AMENDMENT 06-334).

B. **Ordinance No. 1322 (Second Reading) - Standards for Accessory Buildings/Structures**

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY MAYOR PRO TEM DAHL, CARRIED 5-0, to adopt Ordinance No. 1322 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CHAPTER 17 OF THE SAN CLEMENTE MUNICIPAL CODE, RELATING TO STANDARDS FOR ACCESSORY BUILDINGS/STRUCTURES (A PORTION OF ZONING AMENDMENT 06-334).

**MEETING RECESSED**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 5-0, to recess to a meeting of the Redevelopment Agency at 8:36 p.m.

**MEETING RECONVENED**

Council reconvened at 8:37 p.m., with all members present.

12. **ADJOURNMENT**

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 5-0, to adjourn at 8:40 p.m. to an Adjourned Regular Meeting to be held on September 11, 2006 at 7:00 p.m. in the Council Chambers for the purpose of considering a written report prepared by the Community Development Department concerning measures taken to alleviate the condition which led to the adoption of Urgency Ordinance No. 1313 (which relates to restrictions on the issuance of permits for certain residential development in the Shorecliffs neighborhood).

The next Regular Meeting will be held on September 19, 2006 in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California. Closed Session items will be discussed at 6:00 p.m. The General Session will begin at 7:00 p.m.

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CITY CLERK of the City of  
San Clemente, California

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MAYOR of the City of  
San Clemente, California