

CITY OF SAN CLEMENTE

City Council Minutes

Adjourned Regular Meeting - July 25, 2006

An Adjourned Regular Meeting of the San Clemente City Council was called to order on July 25, 2006 at 5:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California.

PRESENT

ANDERSON, DAHL, KNOBLOCK, RITSCHER, MAYOR
EGGLESTON

ABSENT

NONE

STAFF PRESENT

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

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CLOSED SESSION

City Attorney Oderman requested Closed Sessions to discuss three potential litigation matters -- one involving the Cox Communications franchise agreement and issues relating to performance, and two relating to potential code enforcement matters (Dwinnel Landscape Materials and Duke's Griddle and Grill). Also agendaized for Closed Session was the existing litigation case of Callan v. City of San Clemente, et al.

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 5-0, to recess to Closed Session at 5:00 p.m. to discuss the following:

A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Initiation of litigation, pursuant to Government Code Section 54956.9(c): One Potential Case

Closed Session items continued on next page

- B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR, pursuant to Government Code Section 54956.8:

Property: City Wide

Negotiating Parties: Bill Marticorena, Rutan and Tucker and Jim Leach, Cox Communications

Under Negotiation: Price and Terms of Payment

- C. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

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

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

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

City Manager Scarborough, City Attorney Oderman, Assistant City Manager Gudgeirsson and City Clerk Erway were in attendance during all four Closed Sessions. Bill Marticorena, of Rutan and Tucker was present during Items A and B; Community Development Director Holloway and Code Enforcement Officer Smith were present during Item C; Public Works/Economic Development Director Lund, City Engineer Cameron and Karen Walter, of Rutan and Tucker, were present during Item D.

MEETING RECONVENED

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

INVOCATION

Sid Bradshaw, Orange County Sheriff's Chaplain, led the invocation.

PLEDGE OF ALLEGIANCE

Councilmember Knoblock led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

A. **Commendation Presentation - Rick Delanty, Retiring San Clemente High School Art Teacher**

Mayor Eggleston presented a Commendation to Rick Delanty in appreciation for 32 years of outstanding service to the students of San Clemente High School.

B. **Certificates of Recognition - Rod Rodriguez and Agnes Nesbitt (Wall of Recognition Recipients)**

Mayor Eggleston presented Certificates of Recognition to Rod Rodriguez and Agnes Nesbitt in honor of being named the 2006 recipients to the Wall of Recognition.

C. **Proclamation Presentation - Americans with Disabilities Act Recognition Day**

Mayor Eggleston presented a Proclamation to Sandy Condello and Clarice Ventura declaring July 29, 2006 as Americans with Disabilities Act Recognition Day.

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

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

None.

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

“Guidelines for Protecting Hillside Homes” Document - Request to Reference Water Requirements Set Forth in City Code Section 13.12.020

John Tengdin, San Clemente, commented that a “Self Help Room” is available in the Community Development Department which enables citizens to access City records and forms via use of a computer terminal; recommended that the City’s publication entitled “Guidelines for Protecting Hillside Homes” be updated to reiterate the irrigation requirements contained within City Code Section 13.12.020.

5. **CONSENT CALENDAR**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve the Consent Calendar, with the removal of Items D, I and M.

A. **City Council Minutes**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve the City Council minutes of June 20, 2006.

B. MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to receive and file:

- (1) Coastal Advisory Committee minutes of May 11, 2006.
- (2) Parks and Recreation Commission minutes of June 13, 2006.

C. **Warrant Register**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve Warrant Nos. 776896 through 776903 for the period 6-26-06 through 6-30-06 in the amount of \$157,774.75; approve Warrant Nos. 776904 through 777119 and Wire Transfers Nos. 400 and 401, for the period 6-26-06 through 6-30-06 in the amount of \$1,566,242.40; approve Warrant Nos. 777120 through 777257 for the period 7-3-06 through 7-7-06 in the amount of \$1,492,525.76; for a total Warrant Register of \$3,216,542.91.

Payroll Register

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve Warrant Nos. 317929 through 318002, Automatic Deposit Advises 141379 through 141616, for the period 6-19-06 through 7-2-06 in the amount of \$370,036.00; for a total Payroll Register of \$370,036.00.

E. **Easement Agreements - 221-225 Marquita Storm Drain Reconstruction, Project No. 13803**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to:

1. Approve, and authorize the City Manager to execute, the three easement agreements for Assessor's Parcel Nos. 692-076-03 (221 W. Marquita), 692-076-04 (225 W. Marquita) and 692-051-18 (320 Encino Lane).
2. Authorize the City Clerk to record the three easement agreements for Assessor's Parcel Nos. 692-076-03 (221 W. Marquita) - Deed 424, 692-076-04 (225 W. Marquita) - Deed 425, and 692-051-18 (320 Encino Lane) - Deed 426 with the Orange County Recorder's Office.

F. **Authorization to Enter into Written Agreements with Property Owners for Administrative Encroachment Permits**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to adopt Resolution No. 06-51 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO ENTER INTO WRITTEN AGREEMENTS WITH PROPERTY OWNERS FOR ADMINISTRATIVE ENCROACHMENT PERMITS.

G. **Contract Award - Pico Pressure Reducing Station Pipe Realignment, Project No. 26404**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to:

1. Approve the plans and specifications for the Pico Pressure Reducing Station Pipe Realignment, Project No. 26404.
2. Approve, and authorize the Mayor to execute, Contract C06-36 by and between the City of San Clemente and B.R. Day Construction, Inc., relating to the Pico Pressure Reducing Station Pipe Realignment, Project No. 26404, in the amount of \$46,500.

H. **Citizens Option for Public Safety Program (COPS)**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve the use of COPS funds for a portion of a patrol Deputy's position.

J. **Re-grade of the Principal Planner Job Classification**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to:

1. Approve the re-grading of the Principal Planner classification from Range 75 to Range 78.
2. Delete two Senior Planner positions and add two Principal Planner positions in the Planning Division.
3. Adopt Resolution 06-54 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING RESOLUTION NO. 97-09, TO RE-GRADE THE PRINCIPAL PLANNER JOB CLASSIFICATION.

K. **Weed Abatement - 2005 Tax Liens**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to:

1. Adopt Resolution No. 06-52 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, REQUESTING THE ORANGE COUNTY AUDITOR-CONTROLLER TO ADD 2005 WEED ABATEMENT ASSESSMENTS TO THE FY 2006-07 TAX ROLLS.
2. Direct the City Clerk to file the Resolution with the Orange County Auditor-Controller, thereby placing a lien on the affected properties in order to collect revenue owed to the City.

L. **Delinquent Storm Drain and Clean Ocean Fee Tax Liens**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to:

1. Adopt Resolution No. 06-53 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, REQUESTING THE ORANGE COUNTY AUDITOR-CONTROLLER TO ADD DELINQUENT STORM DRAIN AND CLEAN OCEAN FEES TO THE FY 2006-07 TAX ROLLS.
2. Direct the City Clerk to file the Resolution with the Orange County Auditor-Controller, thereby placing a lien on the affected properties in order to collect revenue owed to the City.

ITEMS REMOVED FROM THE CONSENT CALENDAR FOR DISCUSSION

D. **SDG&E Clean Energy Renewable Power Sources**

Duane Cave, Public Affairs Manager for San Diego Gas & Electric Company, provided an overview of its proposal to implement a Sunrise Powerlink program to provide renewable power and save SDGE customers \$1 million per year.

MOTION BY COUNCILMEMBER RITSCHER, SECOND BY MAYOR PRO TEM DAHL, CARRIED 5-0, to adopt Resolution No. 06-50 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA SUPPORTING CLEAN ENERGY RENEWAL POWER SOURCES.

I. Golf Course Clubhouse Project (Project No. 13701)

Golf Course Manager Nelson reviewed the background of the Golf Course Clubhouse project; noted that the project is now estimated to cost \$5.338 million, which is approximately 30% higher than the original budget.

Gary Haun, Project Manager with the Burge Corporation, explained that the increased project cost is due to unprecedented inflation in construction costs.

Assistant City Manager Gudgeirsson reviewed possible options to fund the gap in project funding.

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 4-1 (COUNCILMEMBER RITSCHER VOTING NOE), to:

1. Approve the plans and specifications for the Golf Course Clubhouse Project, Project No. 13701.
2. Approve a transfer of \$1,029,020 from the General Fund, a transfer of \$20,980 from the Public Safety Construction Fund and a transfer of \$200,000 from the Fleet Replacement Fund to Golf Course Capital Improvement Reserve Account 056-667-45300-000-13701.
3. Authorize staff to pursue external financing in the amount of \$3.5 million.
4. Approve bids and authorize the Mayor to execute the following contracts for the Golf Course Clubhouse (Project No. 13701), Contracts Nos. C06-39:

Universal Abatement Services Inc. in the amount of \$16,950

G.D. Heil, Inc. in the amount of \$71,292

R.B. Holt, Inc. in the amount of \$153,180

Builders Termite & Pest Control, Inc. in the amount of \$1,200

Terra Pave, Inc. in the amount of \$18,600

B&N Construction in the amount of \$245,700

Mike Sandoval Concrete in the amount of \$367,591

Neil L. Betley Construction, Inc. in the amount of \$123,160

Action continued on next page

George & Krogh Welding, Inc. in the amount of \$19,900
George & Krogh Welding, Inc. in the amount of \$52,725
SMI Architectural Millwork in the amount of \$90,850
Magnesite Specialties, Inc. in the amount of \$24,018
Dittemore Insulation Contractors, Inc. in the amount of \$20,250
South Coast Roof, Inc. in the amount of \$87,560
CMT Sheet Metal in the amount of \$29,272
Professional Door Systems, Inc. in the amount of \$5,210
Richmond Plastering, Inc. in the amount of \$167,790
F. Rodgers Specialty Contractor, Inc. in the amount of \$30,247
Modern Carpetworks in the amount of \$41,685
Mike R. Jackson Co. in the amount of \$6,900
Robert J. Patterson Painting Company in the amount of \$34,700
Hufcor Airwall, Inc. in the amount of \$14,385
Merit Specialties in the amount of \$20,406
Interstate Pole Industries in the amount of \$4,579.11
T.L. Shield & Associates, Inc. in the amount of \$12,700
Crown Fire Protection, Inc. in the amount of \$58,750
Dabco, Inc. in the amount of \$265,200
ACCO Engineered Systems in the amount of \$149,539
VFS Fire and Security Systems in the amount of \$10,835
Burge Corporation in the amount of \$1,088,127

M. **Contract Award - Grande Vista Slope Repair, Project No. 27801**

City Engineer Cameron explained that only one bid was received for the Grande Vista Slope Repair project and that bid far exceeded the engineer's estimate; advised that Staff has become aware that another company might be willing to bid on the subject project at a substantially lower amount; recommended that Council reject the bid of JC Baldwin and direct Staff to rebid the project; explained that rebidding the project will not have a significant impact on the project's schedule since the residential development above two of the slope failures has not yet submitted drainage plans or returned executed right-of-entry agreements; noted that a public safety issue does not exist.

MOTION BY COUNCILMEMBER KNOBLOCK, SECOND BY MAYOR PRO TEM DAHL, CARRIED 5-0, to:

1. Approve the plans and specifications for the Grande Vista Slope Repair, Project No. 27801.
2. Reject the bid of JC Baldwin for the Grande Vista Slope Repair, Project No. 27801.
3. Direct Staff to rebid the project.

6. **PUBLIC HEARINGS**

A. **Bellota Landslide Repair and Shorecliffs Mobile Home Neighborhood Expansion - General Plan Amendment 06-075/Zoning Amendment 06-076/Tentative Tract Map 17049**

Public Hearing to consider an application comprising a landslide repair project and related subdivision application. The proposal is the result of a settlement agreement entered into by all parties involved with litigation related to the subject landslide. The project area is generally located within the canyon area north of Calle Vallarta and southwest of Via Bellota. The repair proposal includes a General Plan amendment and other related approvals to allow the conversion of 1.5 acres from privately owned open space to medium-low density residential to accommodate the creation of 14 new residential lots to be incorporated into the Shorecliffs mobile home community. The grading effort includes the creation of the new lots and the repair of the landslide, with a total of 485,500 cubic yards of earth being moved, including approximately 67,000 cubic yards of fill being imported from off-site.

Senior Planner Longenecker narrated a PowerPoint presentation entitled "Bellota Landslide Repair and Shorecliffs Mobile Home Expansion" and responded to Council inquiries. A hard copy of Mr. Longenecker's PowerPoint, dated July 25, 2006, is on file with the City Clerk.

Mayor Eggleston opened the Public Hearing.

Mike Hearn, attorney, stated he has been involved with the project since 2001; commended City staff for its efforts; stressed that time is critical to avoid escalating costs, jeopardize public safety and risk further damage; stated that the Settlement Agreement prohibits any new structure that would increase the height of an existing structure or interfere with a current view; stated that the settlement represents a win-win situation.

Ed Beyer, San Clemente, pointed out that bids will not be honored after August 1, 2006; stated that 33 parties concur with the proposed win-win arrangement and urged Council approval this evening.

Stephen Johnson, Capistrano Beach, advised that he has contributed three of his four lots on Via Bellota to the repair fund; explained that none of the parties had insurance that would cover their own landslide, since such policies are not available, but the settlement procedure provides that each party will fix another party's landslide (thereby turning third party insurance into first party insurance); noted that the proposal will force the repair of the properties and recommended Council approval.

Reed Fisher, San Clemente, stated that he moved into a home on Via Bellota (that is now red tagged) in 1986; explained that it was emotional for him to lose his home, but expressed that he is gratified that the City helped the parties come to agreement; urged Council approval.

Kathy Plambeck, San Clemente, stated that her family lived on Via Bellota for 15 years before the property was red tagged; opined that an amazing solution has been developed; requested Council approval this evening to allow homes to be restored and lives returned to normal.

Anne Gilbertson, San Clemente, speaking on behalf of the Plambeck family, stated that she was present when Kathy Plambeck first became concerned with a crack in her garage; stated that the family has moved frequently over the last few years; recommended a positive vote this evening to allow a new beginning.

Fred Vote, President of the Marlborough/Seaview Homeowners Association, displayed photographs of properties on Via Bellota; requested Council approval.

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

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

1. Introduce Ordinance No. 1320 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION AND APPROVING ZONING AMENDMENT 06-076, AMENDING THE ZONING MAP TO CONVERT 1.5 ACRES OF PROPERTY ZONED PRIVATE OPEN SPACE-INLAND CANYON (OS3-IC) TO MEDIUM-LOW DENSITY RESIDENTIAL-PLANNED RESIDENTIAL DEVELOPMENT (RML-PRD), TO ACCOMMODATE THE CREATION OF 14 NEW MOBILE HOME LOTS.
2. Adopt Resolution No. 06-55 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION AND APPROVING GENERAL PLAN AMENDMENT 06-075 AND TENTATIVE TRACT MAP 17049, AMENDING THE GENERAL PLAN MAP TO CONVERT 1.5 ACRES OF PRIVATE OPEN SPACE-INLAND CANYON (OS3) TO MEDIUM-LOW DENSITY RESIDENTIAL (RML), TO ACCOMMODATE THE CREATION OF 14 NEW MOBILE HOME LOTS.

B. Zoning Amendment 06-334, Garage and Accessory Building Setbacks

Public Hearing to consider a request to consider amendments to Title 17, Zoning Ordinance of the Municipal Code, for development standards for accessory structures/buildings, setbacks for street-facing garages/carports for Mobile Home neighborhoods, setbacks for street-side yard setbacks for garages/carports and required parking for single-family residences constructed prior to April 4, 1962. These items were previously considered in Zoning Amendment 06-047, Phase II amendment.

MOTION BY COUNCILMEMBER KNOBLOCK, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 5-0, to continue the Public Hearing regarding ZA 06-334 to the Council meeting of August 15, 2006.

C. **Introduction of New Fees - Special Activities Permits for Non-Residential Properties**

Public Hearing to consider a request by Staff to establish new fees to process the administrative and discretionary components of the new Special Activities Permit.

Associate Planner AhSing reviewed the contents of the Administrative Report and responded to Council inquiries.

Council requested that Staff analyze the issue in greater depth and recommend specific events and/or attendance thresholds that would trigger the requirement for a Special Activities Permit.

MOTION BY COUNCILMEMBER KNOBLOCK, SECOND BY COUNCILMEMBER ANDERSON, CARRIED 5-0, to table the subject issue.

Re-Ordering of Council Agenda

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER RITSCHER, CARRIED 5-0, to consider Agenda Item 8-A (i.e., the Cable Television Franchise Renewal and Cooperative Agreement with Cox Communications) at this point in the meeting.

8. **NEW BUSINESS**

A. **Cable Television Franchise Renewal and Cooperative Agreement with Cox Communications**

Report from the City Clerk concerning the proposed Cable Television franchise renewal and Cooperative Agreement with Cox Communications.

Bill Marticorena, Rutan and Tucker, provided an overview of the contents of the Administrative Report; explained that the proposed franchise agreement is substantially identical to franchise agreements entered into this past year by the Cities of San Juan Capistrano, Laguna Beach, Laguna Niguel, Lake Forest and Dana Point (i.e., the other members of the consortium); explained that the Cooperative Agreement settles various non-franchise matters. In response to Council inquiry, Mr. Marticorena advised that the settlement proceeds of approximately \$1.2 million will be paid within 30 days from approval and execution of the Cooperative Agreement.

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

1. Approve, and authorize the Mayor to execute, a Franchise to Provide Cable Television Services by and between the City and Cox Communications, Inc., with the correction of a typographical error in the Liquidated Damages section on Page 10, Paragraph 4. Contract C87-23
2. Approve, and authorize the Mayor to execute, a Cooperative Agreement between the City and Cox Com, Inc. dba Cox Communications. Contract C87-23

7. **UNFINISHED BUSINESS**

A. **Policy and Procedure - Max Berg Plaza Park Use Management**

Report from the Director of Beaches, Parks and Recreation concerning a proposed Policy and Procedure pertaining to the use of Max Berg Plaza Park.

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

James Gatacre, San Clemente, stated he resides across from Max Berg Plaza Park; noted the difficulty associated with monitoring attendance at private events; suggested that the City require a permit for equipment that is delivered to the Park; urged that amplified sound be prohibited at the Park, except for special occasions such as Cinco de Mayo; voiced concern that safety is jeopardized when game balls enter the street and urged that organized sports be relocated to Las Palmas Elementary School since it is equipped with nets and a fence; recommended that permits be required for gatherings of 25 to 150 persons, instead of gatherings of 50 to 150 persons.

Ken Nielsen, San Clemente, spoke in opposition to the conduct of organized sports activities at the Park; recommended that two private rental systems be established -- one for gatherings of 50 persons or more and another for gatherings of 15 or 25 to 49 persons; opined that a Park rental cost of \$25 per hour is excessive for a small group; urged that bounce houses be allowed with evidence of insurance; questioned the number of Police and CASA citations that have been issued at the Park since the monitoring program was implemented; recommended that signs be placed at the four corners of the Park, in both English and Spanish, that set forth Park rules.

Juan Luna, San Clemente, stated that he has lived across from the Park for 18 years; recommended that 1) soccer be allowed at the Park, 2) music be allowed provided it is not audible 25' from the party boundary, 3) portable microphones be permitted provided they do not disturb residents, and 4) rental fees be reduced.

Following discussion, MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to approve Policy and Procedure No. 702-4, relating to Max Berg Plaza Park Usage, with the following modifications: 1) The Park Monitor is to give priority attention to errant balls that leave the boundaries of the Park; 2) The Park Monitor is to give priority attention to enforcing sound that exceeds permissible levels (particularly near the perimeter of the Park); 3) To the extent possible, Park Monitors are to be bilingual; and 4) Signage that sets forth rules and regulations, is to be installed at the Park. Additionally, Page 3, Paragraph 1, Sentence 1 of the "Max Berg Plaza Park Policies and Fees" is to be amended to read as follows:

"A \$25 processing fee will be charged for written cancellations made at least ~~120~~ 31 days in advance of the rental date."

*Deleted verbiage is indicated in strike-out type. Added verbiage is indicated with italicized font.

MEETING RECESSED

Council recessed at 9:25 p.m. and reconvened at 9:35 p.m., with all members present.

B. La Pata/Vista Hermosa Park - Partial Funding for Final Design Services

Report from the Beaches, Parks and Recreation Director concerning the possibility of authorizing partial funding for final design services of La Pata/Vista Hermosa Park.

Park Planner Beck reviewed the contents of the Administrative Report.

Council noted that at its meeting of June 20, 2006, it directed Staff to investigate whether the additional design work that was proposed to be covered under a Contract Amendment could potentially fall within the scope of the original contract. Park Planner Beck responded that Staff is working with David Volz Design and the City Attorney and estimated that this issue will be ready for Council consideration at its meeting of August 15, 2006. City Attorney Oderman pointed out that the City's position with regard to the additional charges would not be compromised if Council approves Staff's recommendation this evening.

Council expressed an interest in having the City Attorney develop Scopes of Work for City contracts, as opposed to utilizing Scopes of Work that have been prepared by contractors.

During the course of discussion, Council noted that Section 1.7 of the City's Professional Services Contract template requires that Contractors make no change in or addition to the character or extent of the work required by the Agreement except as may be authorized in advance in writing by City. Accordingly, Council requested that Staff emphasize to David Volz Design that written City authorization is needed before it embarks on any work that it believes is outside the scope of the \$350,000 work component.

It was agreed that Staff will provide Councilmembers with a tray memo that describes the phases associated with the La Pata/Vista Hermosa Park project.

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

1. Authorize the expenditure of \$350,000 in project funds to begin preparation of final project plans per existing agreement with David Volz Design (DVD).
2. Direct Staff to issue a Notice to Proceed to DVD for final phases of design work, in preparation for the project's Public Bid.

8. **NEW BUSINESS**

A. **Cable Television Franchise Renewal and Cooperative Agreement with Cox Communications**

This item was considered earlier in the meeting. Please refer to Page 16 of these minutes.

B. **Adoption of City Policy and Initiation of General Plan Amendment to Not Provide View Protection to Private Properties**

Report from the Community Development Director concerning adopting a City Policy, and initiating a General Plan Amendment, to **not** provide view protection to private properties.

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

During the ensuing discussion, individual Councilmember(s) commented as follows: 1) All citizens have the right to petition Council for any issue they desire; 2) Many citizens are not aware that this issue is being considered this evening; 3) It has always been the City's unwritten policy to not protect private views (as opposed to public views), with the only exception being the Shorecliffs area which involved unique circumstances; and 4) Council does not view its action with regard to Shorecliffs to be precedential.

Robert Bailer, San Clemente, opined that Council should provide view protection on a City-wide basis; protested the building at 250 Esplanade because it will take away views, diminish property values, and overwhelm the neighborhood; opined that the southwestern area of the City is in crisis due to increasing home sizes and suggested that if the current trend continues, only the row of houses closest to the ocean will have ocean views; disagreed with the manner by which the City measures structure heights.

Jim Cogan, San Clemente, stated that the issue in Shorecliffs involved competing property rights and noted that Council has made it clear that it was not embarking on view protection.

Council determined that no action is necessary on this item.

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 there are no reportable items from this evening's Closed Session, with the exception of the cable television issue which Council acted upon earlier during the open portion of this meeting.

D. **Council Members**

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

Mayor Eggleston noted that the Annual League of Cities Conference will take place in San Diego from September 6-9, 2006; requested that Councilmembers review the proposed League resolutions.

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

None.

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

Councilmember Knoblock reported that a two-acre brush fire occurred on July 19, 2006 behind the Pinnacle Apartments in Talega.

(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; expressed gratitude to the shelter volunteers, veterinarians and staff.

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

None.

(6) **Councilmember Items.**

Measure M Renewal Plan

Councilmember Ritschel stated that the OCTA Board voted yesterday to approve the Measure M renewal plan and recommend that the Orange County Board of Supervisors also approve the plan; noted that the renewal of Measure M will appear on the November 7, 2006 ballot.

San Clemente Senior Center

Councilmember Ritschel stated that the San Clemente Senior Center is currently seeking funds for its new senior center and urged persons interested in becoming involved to contact Cathy Lee, Center Director.

CUSD Recall Committee's Request for City Position Supporting Removal of Superintendent Fleming

Mayor Eggleston noted that Councilmembers received letters from the Chair of the Capistrano Unified School District Recall Committee requesting that the City take a position supporting the immediate removal of Superintendent Fleming. Council noted that Superintendent Fleming has already submitted his resignation and, consequently, determined that there is no point in pursuing this matter.

11. **RESOLUTIONS/ORDINANCES**

A. **Ordinance No. 1319 (Second Reading) - Shorecliffs Height and View Preservation Ordinance**

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER RITSCHER to adopt Ordinance No. 1319 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING APPENDIX "A" OF TITLE 17 OF THE SAN CLEMENTE MUNICIPAL CODE, ZONING, FOR PURPOSES OF ADDING SPECIAL RESIDENTIAL DEVELOPMENT STANDARDS TO THE SHORECLIFFS RL-11 AND RL-12 OVERLAY ZONES REGULATING RESIDENTIAL DEVELOPMENT WITHIN THE OVERLAY AREAS FOR THE PURPOSES OF NEIGHBORHOOD PRESERVATION AND VIEW; AND AMENDING SECTION 17.16.090 OF TITLE 17 OF THE MUNICIPAL CODE, ZONING, FOR PURPOSES OF A MINOR EXCEPTION PERMIT PROCESS TO ALLOW A REDUCTION OF THE REQUIRED MINIMUM REAR YARD; AND AMENDING SECTION 17.16.060 OF TITLE 17 OF THE MUNICIPAL CODE, ZONING, FOR PURPOSES OF A CONDITIONAL USE PERMIT PROCESS TO ALLOW AN INCREASE OF THE ALLOWED MAXIMUM HEIGHT; AND REPEALING URGENCY ORDINANCE NO. 1313.

Dick Foreman, Shorecliffs, stated that persons who oppose the subject Ordinance have hired a professional company to collect signatures on a referendum petition to reverse the Shorecliffs decision and undermine the democratic process; recommended that citizens ignore the signature gatherers.

Brooke Tyson, Shorecliffs, stated that she supports the Shorecliffs ordinance; commended Council for protecting property rights and restoring peace to the neighborhood; reviewed the history of the issue, noting that an overwhelming majority of Shorecliffs residents support upholding the intent of the original CC&Rs; urged that citizens decline to sign a referendum petition.

Michael Smith, Shorecliffs, conveyed that the majority of Shorecliffs has spoken; opined that a referendum will continue to hurt Shorecliffs and cause strife.

Natalie McGinley, Shorecliffs, opined that a resolution for the Shorecliffs neighborhood has been reached after a 2-1/2 year process; thanked Council for its hard work in developing a fair and balanced solution.

Paige Foreman, Shorecliffs, stated that democracy is alive and well in San Clemente; applauded Council for learning the facts and listening to the people; opined that a referendum will serve to derail the democratic process.

Peter Cassimatis, Shorecliffs, stated that the 2-1/2 year process has concluded that the people of Shorecliffs want and need the proposed Ordinance; commented that the residents only requested that the rights that existed in Shorecliffs when it was built be reinstated.

Tracey Edwards, Shorecliffs, conveyed strong support for the Shorecliffs height and view preservation ordinance; stated the Ordinance is needed to correct Shorecliffs' flawed CC&Rs.

Chris Booth, Shorecliffs, stated that the democratic process has revealed overwhelming support for the Ordinance; voiced concern that the opposition will try to derail the process with a referendum.

Hal Kolp, Shorecliffs, conveyed full support for the Ordinance under consideration; questioned the cost and process if sufficient referendum signatures are obtained.

Richard Findlay, Shorecliffs, commented that the Ordinance under consideration represents the product of 28 months of due process; opined that the Ordinance will preserve the fabric of the existing neighborhood.

Ted Farkas, Shorecliffs, noted that the subject Ordinance only involves Shorecliffs and questioned why all registered voters in San Clemente would be eligible to vote on a referendum.

Steve Elmer, Shorecliffs, thanked Council for restoring his faith in City government.

Anita DuRocher, Shorecliffs, stated that she does not have a view, but voiced concern that a large expansion in her neighborhood has affected her privacy and quality of life.

Jane Graff, Shorecliffs, urged Council to restore peace in Shorecliffs, noting that the community vote revealed that the majority wants the Ordinance to be adopted.

Susan Brewer, Shorecliffs, thanked Council for responding to the Shorecliffs community; suggested that it would be an injustice to have the Ordinance challenged by a referendum.

Andy Wilson, Shorecliffs, stated the Ordinance under consideration will keep the Shorecliffs neighborhood as it was intended, noting that it will preserve all views (not just ocean) and also protect privacy.

Kevin Frazier, Shorecliffs, urged citizens to reject a referendum to reverse the Shorecliffs view and height preservation ordinance; noted that 2-1/2 years were devoted to developing the best democratic solution to Shorecliffs' crisis.

Maura O'Neill, Shorecliffs, disagreed with the premise of "slippery slope" because it incorrectly assumes that a cause for one action will cause a series of other actions; opined that the referendum will be based on faulty reasoning, including the fallacy of "slippery slope".

Robert Sall, Shorecliffs, stated that he was one of the eight public members of the Bulk and Massing Task Force; stated that it was suggested, at the first Task Force meeting, that consideration be given to some reasonable form of design review process that would allow neighbors to provide input similar to the original CC&Rs; stated that the suggestion was protested by some members of the Task Force since they did not believe that any credence should be given to the CC&Rs; explained that, as a result, he became supportive of the Ordinance.

In response to Council inquiry, City Clerk Erway explained the many variables that affect the cost of Special Elections; noted that a City stand-alone election would cost at least \$75,000, while an election that is consolidated with the County of Orange would involve a lesser cost.

In answer to a question raised, City Attorney Oderman explained the referendum petition process, explaining that a successful referendum petition (i.e., one that is signed by 10% of the City's registered voters) would suspend the Ordinance from becoming effective; stated that the issue would be submitted to the City's electorate at the November 2008 election, unless Council called a Special Election; pointed out that the moratorium ordinance will expire around mid-September 2006, thereby providing an interim period of time during which the previously-existing Zoning Code would remain in effect and property owners would be able to apply for permits without complying with the new ordinance; noted that the Anderson Initiative (which will appear on the November 2006 State-wide ballot) would apply to the subject Ordinance since that measure, among other things, would make it an inverse condemnation for the government to adopt new regulations that would cause a substantial economic loss to private property, including regulation of private airspace; stated the measure would grandfather any local regulations in effect as of the date it is adopted, but would apply prospectively to local regulations that are not in effect at the time of adoption.

Norm Dickinson, San Clemente, stated that the argument has been made that no one has a Constitutional or State right to a view; pointed out that Amendment X to the Constitution states that powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people; stated that the Shorecliffs community voted overwhelmingly to have view protection.

THE MOTION ON THE FLOOR WAS VOTED ON AND CARRIED 3-2 (COUNCILMEMBER KNOBLOCK AND MAYOR PRO TEM DAHL VOTING NOE).

12. **ADJOURNMENT**

MOTION BY COUNCILMEMBER ANDERSON, SECOND BY COUNCILMEMBER KNOBLOCK, CARRIED 5-0, to adjourn at 11:15 p.m.

The first Regular Meeting in August was previously cancelled. Consequently, the next Regular Meeting will be held on **August 15, 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.

CITY CLERK of the City of
San Clemente, California

MAYOR of the City of
San Clemente, California