

CITY OF SAN CLEMENTE

City Council Minutes

Regular City Council Meeting – February 19, 2013

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 February 19, 2013 at 5:00 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by City Clerk Baade.

PRESENT DONCHAK, EVERT, HAMM*, MAYOR BAKER
*Arrived at 5:45 p.m.

ABSENT BROWN

STAFF PRESENT George Scarborough, City Manager; Jeff Goldfarb, City Attorney; Joanne Baade, City Clerk.

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CLOSED SESSION

City Attorney Goldfarb requested a Closed Session to discuss the item on the Closed Session agenda.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY MAYOR BAKER, CARRIED 3-0, 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):

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

The Closed Session was conducted in the City Hall Ocean View Conference Room. In attendance were Councilmember Donchak, Councilmember Evert and Mayor Baker. Councilmember Hamm arrived at 5:45 p.m. Mayor Pro Tem Brown was absent. In addition, Assistant City Manager Gudgeirsson, City Attorney Goldfarb and City Clerk Baade were in attendance.

MEETING RECONVENED

Council reconvened with all members present, except Mayor Pro Tem Brown.

INVOCATION

Councilmember Donchak gave the invocation.

PLEDGE OF ALLEGIANCE

Eagle Scout Ian Madison Olaf Kos led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

A. **Presentation of Commendation - Ian Madison Olaf Kos**

Mayor Baker presented a Commendation to Ian Madison Olaf Kos in recognition of achieving the rank of Eagle Scout.

B. **FY 2013 2nd Quarter Financial Report and Mid-Year Adjustments**

Report from the Assistant City Manager/City Treasurer concerning the FY 2013 2nd Quarter Financial Report and mid-year adjustments.

Financial Services Officer Rahn narrated a PowerPoint presentation entitled "Mid-Year Financial Report as of December 31, 2012" and responded to Council inquiries.

Council noted that the San Clemente Library project has been delayed and is now projected to open on December 1, 2014. It was agreed that the City will 1) track the project, 2) send a letter to the County encouraging faster progress, and 3) request that the County provide a project update at a future Council meeting.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, CARRIED 4-0, to:

1. Approve the FY 2013 2nd Quarter Financial Report.
2. Approve and authorize the mid-year adjustments as outlined in the Administrative Report, dated February 19, 2013, which is on file with the City Clerk.

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

Beach Parking Impact Fund Lawsuit

Ricardo Nicol, San Clemente, opined that the Beach Parking Improvement Fund should be retained and utilized for future parking needs; stated that it would be ill-advised to return the fees to the current property owners and suggested, as an alternative, that free parking permits be issued to compensate the owners of properties that paid into the fee.

3. MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, CARRIED 4-0, to wave reading in full of all Resolutions and Ordinances.

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

None.

5. **CLOSED SESSION REPORT – CITY ATTORNEY**

No report.

6. **CONSENT CALENDAR**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to approve the Consent Calendar.

A. **City Council Minutes**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to approve the minutes of the City Council Adjourned Regular Meetings of January 8, 2013 and January 22, 2013.

B. MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to receive and file the following:

(1) Planning Commission Adjourned Regular Meeting minutes of February 6, 2013.

C. **Warrant Register**

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to approve Wire Transfer No. 1093 and Warrant Nos. 505769 through 505954, for the period 01-21-13 through 01-25-13, in the amount of \$1,949,349.06; approve Wire Transfer Nos. 1094 through 1098 and Warrant Nos. 505955 through 506056, for the period 01-28-13 through 02-01-13, in the amount of \$1,252,021.19; for a total Warrant Register of \$3,201,370.25.

Payroll Register

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to approve Warrant Nos. 173 through 176 and Automatic Deposit Advises 5716 through 5983, for the period 01-21-13 through 02-03-13, in the amount of \$396,935.33; for a total Payroll Register of \$396,935.33.

D. **Contract Award - Major Street Maintenance for Via Senda, Calle Tinaja, and 407 Cazador Lane**

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

1. Approve the plans and specifications for Major Street Maintenance for Via Senda, Calle Tinaja, and 407 Cazador Lane, Project No. 23301.
2. Approve, and authorize the Mayor to execute, Contract C13-02, by and between the City of San Clemente and Ben's Asphalt, Inc., providing for Major Street Maintenance for Via Senda, Calle Tinaja, and 407 Cazador Lane, Project No. 23301, in the amount of \$89,435.

E. **Contract Award - Well Treatment Backwash Pipeline and Avenida Vaquero Waterline Replacement**

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

1. Approve the plans and specifications for the Well Treatment Backwash Pipeline, Project No. 24401.
2. Approve the plans and specifications for the Avenida Vaquero Waterline Replacement, Project No. 13405.
3. Approve a supplemental appropriation of \$125,000 to Account 052-466-45300-000-24401 from the Water Fund Depreciation Reserve.
4. Approve a supplemental appropriation of \$18,050 to Account 052-466-45300-000-13405 from the Water Fund Depreciation Reserve.
5. Approve, and authorize the Mayor to execute, Contract C13-03, by and between the City of San Clemente and GCI Construction, Inc., providing for the Well Treatment Backwash Pipeline, Project No. 24401, and Avenida Vaquero Waterline Replacement, Project No. 13405, in the amount of \$187,631.

7. **PUBLIC HEARINGS**

None.

8. UNFINISHED BUSINESS**A. Code Amendment - Making Violations of City-Issued Permits and Conditions a Nuisance**

Report from the Community Development Director concerning the possibility of amending the Code of the City of San Clemente to make violations of City-issued permits and conditions a nuisance.

Code Compliance Officer Panas reviewed the contents of the Administrative Report and responded to Council inquiries.

MOTION BY COUNCILMEMBER EVERT, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0, to introduce Ordinance No. 1563 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CODE SECTION 8.52.030 TO MAKE VIOLATIONS OF APPROVED CITY PERMITS A NUISANCE FOR MUNICIPAL CODE ENFORCEMENT.

B. Code Amendment - Removal of Business-Generated Litter on the Public Right-of-Way

Report from the Community Development Director concerning the possibility of amending the Code of the City of San Clemente relative to the removal of business-generated litter on the public right-of-way.

Code Compliance Officer Panas reviewed the contents of the Administrative Report and responded to Council inquiries.

During the course of discussion, Council determined that the proposed Ordinance should require that merchants remove litter that property owners or tenants produce or distribute that is located in the public right-of-way within 100 feet of their property (rather than within 300 feet as proposed by Staff).

MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER EVERT, CARRIED 4-0, to introduce Ordinance No. 1564 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING CODE SECTION 8.40.070 TO DEAL WITH LITTER GENERATED BY BUSINESSES THAT ACCUMULATES IN THE PUBLIC RIGHT-OF-WAY, with the modification that Section 1 of the Ordinance be modified to provide that merchants are to remove litter that property owners or tenants produce or distribute, that is located in the public right-of-way within 100 feet of their property.

C. **Bonito Canyon Tennis Court Rehabilitation and Budget Request**

Report from the Beaches, Parks and Recreation Director concerning the rehabilitation of the Bonito Canyon Tennis Courts.

Beaches, Parks and Recreation Director Heider reviewed the contents of the Administrative Report and responded to Council inquiries.

Vasko Mitzev, San Clemente, spoke on the importance of maintaining the Bonito Canyon tennis courts, noting that they are conveniently located next to the Boys and Girls Club; suggested that it would be prudent to address the drainage issue at this time.

Council requested that Staff report on potential drainage solutions, provide Council with a map that identifies the locations of public tennis courts in the city, and report back on the cost associated with installing a light switch at the Bonito Canyon tennis courts.

Councilmember Donchak read a letter from the Boys and Girls Club that indicated that it does not support the proposal because it lacks sufficient staff to support a tennis program and because of safety concerns associated with the courts' location.

MOTION BY COUNCILMEMBER EVERT, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to direct Staff to proceed with Option 1, including temporary repair of two courts, negotiate a Joint Use Agreement with Capistrano Unified School District (CUSD) which seeks public use of the tennis courts, and include the larger reconstruction project as part of the 2015 Capital Improvement Program when the outcome of the Joint Use Agreement is known.

D. **North Beach Parking**

Report from the Community Development Director relative to parking at North Beach.

Community Development Director Holloway reviewed the contents of the Administrative Report and responded to Council inquiries.

In response to Council inquiry, City Attorney Goldfarb described the parameters of what can be discussed this evening, pointing out the importance of maintaining attorney-client privilege and not speaking to the pending lawsuit; reported that the 2nd paragraph on page 2 of the Administrative Report

erroneously states that the historic cultural resources have been vacant for the past 25 years, adding that the length of time is more in the range of 20 years.

Brad Malamud, San Clemente, referenced prior materials that he provided to Council; asserted that the proposal represents an illegal use of the Beach Parking Impact Fund, noting that the money was not spent within five years and 5-year reports were not timely filed; stated that Ordinance No. 1174 requires that the Beach Parking Impact Fund be used for ground-level parking, as opposed to a parking structure as proposed; commented that the resolution under consideration does not indicate that a shortage of beach parking exists and also fails to mention Ordinance No. 1174; asserted that a 100-space parking surplus exists; urged that Council defer action until a decision on the lawsuit has been rendered, adding that Council could then spend the money if it is determined that it is legal to do so.

John Tengdin, San Clemente, suggested that the library parking lot be reconstructed with a 210-space three-level parking structure; described the details of his proposal, asserting that the structure could be constructed at the same per-space cost as a surface lot.

Ricardo Nicol, San Clemente, asserted that additional beach parking will be needed in the future; stated that there is no place to build parking close to the beach access points and suggested that a parking structure would be underutilized for nine months out of the year; suggested that the Beach Parking Impact Fund be used to fund a shuttle service that would be offset by a modest user fee.

Brenda Miller, San Clemente, urged that Council not spend any money from the Beach Parking Impact Fund until the City's right to do so is determined in a court of law.

Don Slater, San Clemente, stated that people park in his North Beach neighborhood because it is free; conveyed his opinion that the Beach Parking Impact Fund should be utilized to provide parking that is offered free of charge so that people are not provided an incentive to park on residential streets.

Michael Metcalf, San Clemente, urged that Council not rush to spend money on additional parking; conveyed his opinion that parking areas in close proximity to the beach degrade the beach.

Alan Korsen, San Clemente, urged that Council defer a decision until the lawsuit is settled; opined that the specific plan for North Beach should be decided before a determination is made to construct a parking structure.

George Gregory, San Clemente, spoke on the need to add parking at this time; recommended that streets be converted to one-way traffic and that diagonal parking spaces be installed; suggested the possibility of giving Talega residents a one-year pass to park at the beach.

Charles Mann, San Clemente, opined that the proposal to add parking in North Beach is ill-advised since sufficient parking already exists; suggested that it would be inappropriate for the City to purchase land from private owners when it already owns land in the area; conveyed that it is inappropriate to spend \$7.3 million for parking lots to accommodate Rancho Mission Viejo residents.

Richard Boyer, General Plan Advisory Committee Member, stated that the Committee discussed the El Camino Real lot without a meaningful decision; commented that it is important to ensure that a new building would not block the public view corridor; recommended that a bike and pedestrian master plan body be established to make recommendations on issues such as the one in question; spoke on the importance of holistic thinking.

MEETING RECESSED

Council recessed at 7:50 p.m. and reconvened at 7:59 p.m., with all members present, except Mayor Pro Tem Brown.

During the ensuing discussion, Council discussed the possibility of moving forward with the development of construction/bid documents for the El Camino Real lot, and noted the potential to include resources for electric vehicles that might include re-charging components, and products such as Green Pods (which are bicycle storage facilities with showers, lockers and restrooms).

City Attorney Goldfarb reviewed the history of the parking issue, noting that the North Beach lot originally provided parking for the Miramar Theatre, casino and bowling alley; explained that the Beach Parking Fund was collected to construct lots that would have been built earlier, but that were deemed unnecessary because the parking demand for the Miramar, casino and bowling alley had waned; stated that the understanding has always been that the historic structures would get their parking back when needed; stated that the proposal before Council is to use the Beach Parking Impact Fund for the purpose for which it was collected, i.e., to provide parking for beach users.

Community Development Director Holloway summarized Metrolink's parking and the findings of the two Nelson Nygaard studies; commented that the earlier Nelson Nygaard study, which indicated that additional parking would not be needed until 2035, failed to consider the needs of the restored historic

structures (i.e., Miramar Theatre, casino and bowling alley); advised that the second study, that found that 197 parking spaces are needed, took the parking demands of the re-purposed historic structures into consideration.

MOTION BY COUNCILMEMBER EVERT, SECOND BY COUNCILMEMBER DONCHAK CARRIED 3-1 (MAYOR BAKER VOTING NOE AND MAYOR PRO TEM BROWN ABSENT), to adopt Resolution No. 13-04 entitled A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, REGARDING THE DEVELOPMENT OF BEACH PARKING WITHIN NORTH BEACH, with the deletion of Section 3. This Resolution provides direction as follows:

1. Staff is to proceed with development of construction/bid documents for the City-owned El Camino Real lot, based upon the proposed design option, as outlined in the Administrative Report, dated February 19, 2013, that is on file with the City Clerk.
2. Staff is to proceed with negotiations to acquire the Gallery site.

Note: Council determined to **NOT** direct Staff to proceed with development of construction documents for design Option 5, a parking structure and commercial space development, as outlined in the Administrative Report, dated February 19, 2013, that is on file with the City Clerk. Consequently, this staff-recommended option was deleted from Section 3 of Resolution No. 13-04.

9. **NEW BUSINESS**

A. **Marblehead Coastal Development - Agreement with Arch Insurance and Lehman Brothers (dba LV Marblehead, LLC)**

Report from the Public Works Director/City Engineer concerning the possibility of approving an agreement with Arch Insurance and Lehman Brothers (dba LV Marblehead, LLC) relative to the Marblehead Coastal Development.

Assistant City Engineer Bonigut reviewed the contents of the Administrative Report.

Lisa Gordon, on behalf of Lehman Brothers, indicated that the agreement before Council will allow Lehman Brothers to proceed with the project; provided an update on the development schedule.

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER EVERT, to approve, and authorize the Mayor to execute, Contract C13-04, by and between the City of San Clemente, Arch Insurance, and Lehman Brothers (dba LV Marblehead, LLC) relative to the Marblehead Coastal Development.

Don Kunze, San Clemente, expressed concern with trails and open space throughout the Marblehead Coastal development and requested that this issue be agendized.

THE MOTION ON THE FLOOR WAS VOTED ON AND CARRIED 4-0.

B. Contract Amendment - Senior Center Project Funding Agreement

Report from the City Manager concerning the possibility of amending the Project Funding Agreement with South County Senior Services (Age Well Senior Services) relative to the construction of the new senior center.

City Manager Scarborough reviewed the contents of the Administrative Report.

Dr. Marilyn Ditty, CEO of Age Well Senior Services, thanked Council for its support for the construction of the senior center; opined that interest should follow the principal and that the funding raised should be applied to what is owed; explained that it is difficult to raise additional money to pay the City, but pointed out that efforts will continue to collect outstanding pledges, which far exceed the amount owed to the City.

Mark McGuire, San Clemente, relayed his belief that Jim Johnson would agree that the accrued interest should apply toward the contribution that Marblehead Coastal paid toward the senior center.

In response to Council inquiry, Dr. Ditty rejected the proposed concept of the City matching contributions made by private donors as a means of incentivizing donations; noted that the country remains in a recession and that it is difficult to find donors; stated that fundraising efforts are on-going to raise funds for operational purposes.

MOTION BY COUNCILMEMBER EVERT, SECOND BY MAYOR BAKER, CARRIED 4-0,
to:

1. Determine that the \$157,078.24 interest earnings will be included as a Repayment Credit Amount.
2. Approve, and authorize the Mayor to execute, the Second Amendment to the Project Funding Agreement, by and between the City of San Clemente and Age Well Senior Services (successor in interest to South County Senior Services, Inc.) for the construction of the new senior center. (Contract C09-35)

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

None.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

None.

C. **City Attorney**

None.

D. Council Members

- (1) **Report from Mayor Baker, City Representative to the Foothill/Eastern Transportation Corridor Agency, relative to F/ETCA Matters**

Mayor Baker provided a status report on the Foothill/Eastern Transportation Corridor, noting that 85 individuals have applied for the CEO position and that San Clemente will have two votes on the selection of the CEO.

- (2) **Report from Councilmember Evert, City Representative to the San Joaquin Hills Transportation Corridor Agency, relative to SJHTCA Matters**

No report.

- (3) **Report from Councilmember Donchak, City Representative to the Coastal Animal Services Authority (CASA), relative to CASA Matters**

Councilmember Donchak reported on the Pet of the Week; advised that Scott Schoeffel replaced Lara Anderson as Dana Point's representative on the CASA Board.

- (4) **Recognition of San Clemente High School's National Honor Society Members and Winter Sports Teams**

Mayor Baker recognized San Clemente High School's National Honor Society Members and expressed congratulations to the Triton winter sports teams for a great season.

- (5) **California Joint Powers Insurance Authority (CJPIA)**

Councilmember Donchak stated that she was selected to serve on the CJPIA Executive Committee.

12. RESOLUTIONS/ORDINANCES

A. Ordinance No. 1562 (Second Reading) - 100 Mira Puerta – (General Plan Amendment 12-184/Zoning Amendment 12-185) - Evans Residence

MOTION BY COUNCILMEMBER EVERT, SECOND BY COUNCILMEMBER DONCHAK, CARRIED 4-0, to adopt Ordinance No. 1562 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, ADOPTING GENERAL PLAN AMENDMENT 12-184/ZONING AMENDMENT 12-185, AMENDING THE GENERAL PLAN AND ZONING DESIGNATION FROM PRIVATE OPEN SPACE TO RESIDENTIAL LOW FOR A PROPERTY LOCATED AT 100 MIRA PUERTA.


13. ADJOURNMENT

MOTION BY COUNCILMEMBER DONCHAK, SECOND BY COUNCILMEMBER HAMM, CARRIED 4-0, to adjourn at 9:04 p.m.

The next Regular Council Meeting will be held on Tuesday, March 5, 2013 in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California. Closed Session items will be discussed at 5:00 p.m. The General Session will commence at 6:00 p.m.



MAYOR of the City of
San Clemente, California


CITY CLERK of the City of
San Clemente, California