



Memorandum Community Development

February 2, 2016

To: City Council
From: Cecilia Gallardo-Daly, Community Development Director
Subject: Proposed Changes to STLU Ordinance, Agenda Item 9A
Copies: James Makshanoff, City Manager
Scott Smith, City Attorney

Background

At the January 19, 2016 City Council meeting, Council adjourned this agenda item to provide staff an opportunity to address some comments raised by the City Council regarding the proposed STLU ordinance (“Original Ordinance”) and review proposed changes as part of a revised ordinance (“Amortization Ordinance” – Attachment 1) presented by Councilmember Hamm. The intent of the Amortization Ordinance was to address public comments received about specific provisions. Attached is a refinement of the Amortization Ordinance that has been prepared by staff (“Staff Ordinance” – Attachment 2) that maintains most of the changes of the Amortization Ordinance, but with some clarifications.

Discussion

Most of the comments of concern received at the January 19, 2016 City Council meeting were regarding the 275-day owner-occupied requirement of the Original Ordinance. To address this, the Amortization Ordinance provides a grandfathering provision for those STLUs that have current Vacation Rental Permits, which would not subject them to the exclusive 90-day rental limit or the owner-occupied requirement for up to five years. The Amortization Ordinance also eliminated the requirement for a business license and did not require owner-occupancy of a STLU, but rather limited the rental period of an STLU to 90 days of exclusive rentals. The Amortization Ordinance differs from the Original Ordinance in the following ways:

1. Adds language to provide an amortization period – temporary “grandfathering” – for currently registered STLUs. The proposed amortization period is five years or when the property changes title, whichever comes first.
2. Adds a limitation on the total amount of time an STLU may be exclusively rented per calendar year. The limitation is 90 days. For most of the remainder of the year that the property is not used exclusively as a vacation rental, the owner is not required to occupy the unit. However, the owner may choose to occupy the unit, rent it

long-term, or leave it vacant. If the owner chooses to occupy the unit, they may continue to rent a portion of the unit in a home-sharing arrangement.

In addition to some clarifications and minor modifications intended to strengthen recitals and address formatting changes, the Amortization Ordinance has been further modified based on Council, staff, and City Attorney input. The Staff Ordinance provides the following changes from the Amortization Ordinance:

1. Reduces the owner-occupancy requirement to 14 days per calendar year.
2. Reduces number of citations of violation required to initiate the STLU permit revocation process from four to three.
3. Maintains requirement for STLUs to obtain a business license.
4. Clarifies that a home exchange counts toward the 90 day exclusive rental limit.
5. Clarifies that home-sharing is not subject to the 90 day exclusive rental limit.
6. Other minor language clarifications to improve the enforceability of the new requirements.

The Centennial General Plan seeks to ensure, “a high quality of life for our citizens” (page LU-1) by achieving, “a mix of residential neighborhoods and housing types that meets the diverse economic and physical needs of residents... and that reflects community expectations for high quality” (Land Use Element Residential Land Uses Goal). Part of this sense of high quality, as expressed by residents, is developed in neighborhoods that include higher proportions of long-term residents and owner-occupants.

Conversely, many City residents have expressed concerns about the overall degradation of the residential character of some neighborhoods as a result of STLUs due to the temporary nature of their renters. The proposed ordinance is intended to protect neighborhoods from adverse effects resulting from the operation of short-term lodgings, and to protect their residential character.

Some additional options the Council could consider include: (1) adopting the Staff Ordinance without any owner-occupancy provisions, (2) adopting the Staff Ordinance with the 275-day owner-occupancy provision proposed in the Original Ordinance, or (3) adopting the Staff Ordinance with modifications to the maximum rental period of 90 days and the grandfathering provisions.

Attachments:

1. Amortization Ordinance
2. Staff Ordinance
3. Agenda Report dated January 19, 2016

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING SAN CLEMENTE MUNICIPAL CODE SECTION 1.16.030 REGARDING VIOLATIONS OF STATE OR FEDERAL LAW, CHAPTER 3.24, ARTICLES I AND III, REGARDING SHORT-TERM LODGINGS, TITLE 5 REGARDING BUSINESS LICENSES, SECTION 8.48.040 REGARDING GENERAL NOISE REGULATIONS, AND SECTION 9.16.010 REGARDING LOUD AND UNRULY GATHERINGS, AND ADDING CHAPTER 9.20 REGARDING REPEAT NUISANCE SERVICE-CALL FEE

WHEREAS, new, internet-based technologies have dramatically altered the nature of the short-term rental industry in terms of the offering and acquisition of rentals, the types of clientele attracted to short-term rentals in residential zones, and the enforcement of transient occupancy tax collection; and

WHEREAS, an ever-increasing number of ~~tourists~~people renting short-term lodgings is severely escalating the demand for City services and creating adverse impacts in residential zones; and

WHEREAS, the City and sheriff have received and continue to receive numerous complaints regarding excessive noise, parking, litter, disorderly conduct, and concerns regarding security and public safety at short-term lodgings; and

WHEREAS, the City, by virtue of the police powers delegated to it by the California Constitution, has the authority to enact laws to promote the health, safety, and general welfare of its residents; and

WHEREAS, the negative impacts of short-term lodgings are not a problem that is isolated to the City but are a worldwide issue that many cities have recently regulated. The problem has regional implications affected by the regulatory actions of neighboring cities that could escalate the negative impacts of short-term lodgings in residential zones if the City does not adopt appropriate regulations to promote the health, safety, and general welfare of its residents; and

WHEREAS, the occurrence of loud or unruly gatherings on private property is a threat to the public health, safety, general welfare, and quiet enjoyment of residential property, as well as to the quiet enjoyment of residential property; and

WHEREAS, law-enforcement response to loud and unruly gatherings diverts law-enforcement resources and might leave other areas of the City with inadequate law-enforcement protection. Responses to such gatherings result in a disproportionate expenditure of public-safety resources; and

WHEREAS, persons held responsible for abetting or allowing loud or unruly gatherings are more likely to properly supervise or stop such conduct at gatherings held on property in their possession or under their control; and

WHEREAS, the intent of these amendments is to protect the public health, safety, general welfare, and quiet enjoyment of residential property, rather than to punish; and

WHEREAS, initial analysis of nuisance complaints at short-term lodgings revealed that the City's standard for excessive noise needs clarifying; and

WHEREAS initial analysis also suggests that the role of City officers in regulating nuisances needs clarifying; and

~~WHEREAS, some short-term lodgings repeatedly create nuisances, which in turn requires repeated service calls by city law enforcement, code enforcement, fire, and other city services and diverts valuable resources away from other city residents; and~~

WHEREAS, regulation of repeat nuisance service-calls is intended to shape owner and renter expectations of conduct at and operating standards for short-term lodgings, so to put owners and potential renters on notice before the latter make their summer reservations, the repeat nuisance service-call regulation also needs to take effect before peak-season reservations; and

WHEREAS, the City has a strong interest in preventing fraud against businesses that lend against or that insure residential properties in San Clemente; and

WHEREAS, inadequate supervision of short-term lodgings can also put transient renters themselves at risk of physical, emotional, or financial harm, including fraud; and

WHEREAS, the City desires to protect neighborhoods from nuisances and other adverse effects resulting from the improper operation of short-term lodgings and to ensure that the City collects transient occupancy taxes; and

WHEREAS, the proliferation of short-term lodgings impacts the residential character of several neighborhoods; and

WHEREAS, numerous residents have expressed public-safety and general health and welfare concerns about adverse effects of short-term lodgings; and

WHEREAS, the commercialization of residential properties and the proliferation of short-term lodgings in particular drive up rents by reducing the stock of affordable housing; and

WHEREAS, short-term lodgings are rented for less than 30 days with the vast majority of those rentals occurring during the summer months when demand for parking and City services is greatest; and

WHEREAS, the peak rental season is approaching and people are already making reservations for short-term lodgings; and

WHEREAS, many people are reserving short-term lodgings in San Clemente now for the spring and summer months; the proliferation of vacation-rental websites has allowed more people to reserve more units sooner than in years past; the rush to reserve a short-term lodgings is starting earlier than it has before; and every week, more rentals are being reserved. The City must regulate short-term lodgings and put owners and potential renters on notice as soon as possible to prevent the harms that have often accompanied this use; and

WHEREAS, increased demand for City services from short-term lodgings overburdens and threatens the City's ability to provide such services; and

WHEREAS, under the existing municipal code all short-term lodgings are subject to transit-oriented tax under sections 3.24.010 and 3.24.020, either as a *hotel* or as a *vacation rental property*, and under the proposed code revisions below, using new definitions of *hotel* and *STLU*, all short-term lodgings remain subject to the same tax; and

WHEREAS, the adoption of the proposed regulations is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15301 (Existing Facilities) of the State CEQA Guidelines because allowing short-term lodgings that meet the standards adopted here will not involve an expansion of use beyond that currently existing; and further is exempt under section 15061(b)(3) because it can be seen with certainty that adoption of the Ordinance does not result in a physical change in the environment. Implementation of the regulations does not increase residential density or the intensity of use as the standards adopted herein are consistent with otherwise allowable residential ~~use~~uses and activities.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1. Findings.

The City Council here incorporates and adopts the foregoing recitals and accompanying staff report as findings as though they were fully set forth herein.

Section 2. Clarification of Existing Code.

The first sentence in section 1.16.030 of the code is amended to read as follows:

Any activity, object, establishment, property, or facility operated, conducted, or maintained contrary to the provisions of the San Clemente Municipal Code or state or federal law or regulation shall be, and the same is hereby declared to be, unlawful and a public nuisance.

Section 3. Changes to Chapter 3.24, Article I.

Chapter 3.24, Article I, of the code is amended to read as follows:

3.24.010 - Definitions.

For the purposes of this chapter, the following words and phrases have the meanings respectively ascribed to them by this section:

“Agent” means a duly authorized individual, company, or legal entity engaged by the owner of a lodging unit to represent, manage, or oversee the operations of the lodging unit on behalf of the owner.

“City Manager” means the City Manager of the City of San Clemente or his or her respective assignees.

“Finance and Administrative Services Director” means the Finance and Administrative Services Director of the City of San Clemente, or his or her duly authorized designee.

“Guest” means any person (including an invitee) visiting a renter of a lodging unit. A guest is not authorized by the lease to sleep or stay overnight in the unit.

“Hotel” means any structure, or any portion of any structure, containing ~~206~~ or more short-term lodging units.

“Lodging unit” means a structure, or any portion of a structure, that is occupied or that is intended or designed for occupancy for lodging or sleeping purposes. “Lodging unit” does not include a use that may not be treated as a business under state or federal law.

“Occupancy” means the use or possession, or the right to the use or possession, of any lodging unit for lodging or sleeping purposes.

“Operator” means the person who is the proprietor of the hotel or STLU (defined in this section), whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than that of an employee, the managing agent is also deemed an operator for the purposes of this chapter and has the same duties and liabilities as the principal. Compliance with the provisions of this chapter by either the principal or the managing agent is considered to be compliance by both.

“Owner” means a person that holds legal or equitable title to a lodging unit.

“Person” means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint-stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

“Rent” means the consideration charged, whether or not received, for the occupancy of space in a lodging unit, valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, and property and services of any kind, without any deduction therefrom.

“Renter” means a person, that rents or occupies a lodging unit and who is authorized to sleep and stay there overnight.

“Short term” means for a period of 29 or fewer consecutive calendar days. When applied to lodging, “short-term” refers to the duration of occupancy.

“Single housekeeping unit” means that the occupants of a dwelling unit have established ties and familiarity with each other, jointly use common areas, interact with each other, share meals, household activities, and expenses and responsibilities. Membership in the single housekeeping unit is fairly stable as opposed to transient; members have some control over who becomes a member of the household, and the residential activities of the household are conducted on a nonprofit basis. There is a rebuttable presumption that integral facilities and uses do not constitute single housekeeping units. Additional indicia that a household is not operating as a single housekeeping unit include but are not limited to: the occupants do not share a lease agreement or ownership of the property; members of the household have separate, private entrances from other members; members of the household have locks on their bedroom doors; members of the household have separate food-storage facilities, such as separate refrigerators.

“STLU” means short-term lodging unit other than a hotel, as those terms are defined by this section.

“Transient” means a person who exercises occupancy or is entitled to residential occupancy by reason of concession, permit, right of access, license, or other agreement for a period of 29 or fewer consecutive calendar days, counting portions of calendar days as full days. Any such person is deemed to be a transient until the 29-day period expires unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. For purposes of this chapter, the changing of rooms in a structure or property does not, by itself, cause a break in an otherwise consecutive period of occupancy. “Transient” does not apply to any of the following:

1. • a person who by lease or other enforceable written agreement obtains an exclusive legal right to occupy a residential property or portion thereof for more than 29 consecutive calendar days,
2. • a person who by lease or other enforceable written agreement obtains an exclusive legal right to occupy a residential property or portion thereof for an indeterminate period but who is required to give at least 30 days advanced notice of termination of his or her exclusive right of occupancy, or

3. • a person who makes an ~~unreimbursable~~ non-reimbursable payment for the right to occupy any residential property for more than 29 days.

“Transient Occupancy Tax” or “TOT” means that tax levied by the City and collected by the operator under this chapter.

3.24.020 - Levy and collection of tax.

- A. For the privilege of occupancy in any hotel or STLU, each transient is subject to and must pay a tax in the amount of 10 percent of the rent charged by the operator. Such tax constitutes a debt owed by the transient to the City, which is extinguished only by payment. The transient must pay the tax to the operator of the hotel or STLU when the rent is paid.
- B. If the room at the hotel or STLU is complimentary, and is provided as consideration for a service provided to the hotel or the operator or for promotional or marketing purposes, the deemed rent is the higher of (i) the value of the services received or (ii) the average rent of all of the rooms in the hotel on the day that the room was provided. All unpaid tax is due when the transient ceases to occupy space in the hotel, regardless of whether the operator collects, or is able to collect, the full amount of the rent owed.
- C. If a room at the hotel or STLU is cancelled prior to occupancy, and the person canceling is charged the full room rate (e.g., the person is charged for occupancy even though the person might not occupy the room), the amount charged is the rent, and the operator shall collect the transient occupancy tax on that amount and pay it to the City.
- D. If the rent for use of an STLU is reduced or waived in consideration for a service provided to the STLU, its operator or owner, or for promotional or marketing purposes, then the deemed rent is the higher of (i) the value of the services received or (ii) the advertised rate of the STLU for the period of time that the STLU was so occupied. In addition, if the rent for use of an STLU is reduced or waived for any other reason, then the deemed rent is the advertised rate of the STLU for the period of time that it was so occupied unless the operator executes under penalty of perjury and submits to the Finance and Administrative Services Director a completed form that identifies the name, permanent address, telephone number, and contact information for each transient who occupied the STLU; the period or periods of time during which the transient so occupied the STLU; and a brief explanation of the reasons for the reduction or waiver of rent (e.g., discount to facilitate a rental in the ordinary course of business, rental to a family member, etc.). The forms for reduced or waived rents shall be available at the office of the City Finance and Administrative Services Director.
- E. Refusal or failure on the part of the transient to pay the transient occupancy tax due under this chapter does not relieve the transient of its obligation to pay such tax, and the transient remains liable to the City until all such tax has been paid.

3.24.030 - Exemptions from taxation.

- A. The following persons are exempt from paying the transient occupancy tax imposed by this chapter:
1. Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax;
 2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;
 3. The owner of the STLU while occupying the property.
- B. Exemptions may only be granted if the operator completes an exemption claim form under penalty of perjury when rent is collected. The exemption claim form shall be available at the office of the Finance and Administrative Services Director. After the Director reviews and verifies the documents offered in support of the exemption, the Director will determine whether or not the exemption is granted.

3.24.040 - Determination of tax by City on failure of operator to collect or remit tax.

If an operator fails or refuses to collect the tax imposed by this chapter or to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof, the Finance and Administrative Services Director may proceed in such manner as he or she deems best to obtain facts and information on which to base his or her estimate of the tax due, including, but not limited to, an audit of the operator's records. If an audit is deemed necessary by the Finance and Administrative Services Director, the operator is liable for such costs. When the Finance and Administrative Services Director procures such facts and information as he or she can with reasonable effort, the Director shall proceed to determine and assess against the operator the tax, interest, and penalties provided for by this chapter. If such determination is made, the Finance and Administrative Services Director shall give a notice of the amount so assessed in the manner described in section 3.24.050.

3.24.050 - Notice and hearing on violation.

- A. Nonadministrative-Fine Violations. The owner shares responsibility for compliance with this chapter. If there is reason to believe that an operator or owner has violated any of the provisions of this chapter or has been assessed estimated taxes described in section 3.24.040, the City shall provide written notice to the operator and (if not the operator) to the owner. Notice to the operator shall be sent to the operator's address and at the hotel or STLU, and notice to the owner shall be sent to the owner's residence or business address as those property addresses are listed in the City's business license or other records. The notices shall inform the operator and owner of the following:
1. the nature of the alleged violation;

2. the penalties for such violation; and
 3. the owner's and operator's right to request a hearing on the alleged violation, which request shall be in writing and received by the City within 15 days after the date of the violation notice.
- B. If the operator or owner timely requests a hearing, the City Manager shall select a Hearing Officer to preside over the hearing. The City shall provide written notice to both the operator and owner of the date, time, and location of the hearing. The hearing notice shall further state that the owner and operator may present evidence, call witnesses, cross-examine the City's witnesses, and be represented by an attorney at the hearing. The above notwithstanding, the City shall be permitted to present evidence in the form of affidavits in accordance with Government Code section 11514. At the conclusion of the hearing, or as soon thereafter as is practical, the Hearing Officer shall determine, in writing, whether there has been a violation of any ordinance, resolution, or law regulating the operation of the STLU. The written determination shall be provided to the operator at the operator's address and at the STLU address as listed in the City's business license or other records, and it shall be provided to the owner at the owner's residence or business address of record. The operator or owner may appeal the decision of the Hearing Officer to the City Council in the manner provided in section 3.24.060 of this chapter. If a hearing is not timely requested, the existence of the violation is conclusively presumed, and the City Manager or his or her designee shall send to the owner and operator written notice of the penalty imposed.
- C. Administrative-Fine Violations. The City shall follow the notice and hearing procedures established in Chapter 1.20 for any violation subject to the imposition of an administrative fine.

3.24.060 - Appeals.

An owner or operator aggrieved by any decision of the Hearing Officer under subsection 3.24.040(B) of this chapter may appeal to the City Council by filing a notice of appeal with the City Clerk within 15 days of service or mailing of the determination of tax due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator and owner at their last known places of address. The findings of the City Council are final and conclusive and shall be served upon the appellant in the manner prescribed in this chapter for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice. [All penalties, assessments, and taxes must be paid prior to filing an appeal.](#)

[3.24.065 - Procedure for imposition of penalties and revocation.](#)

[Penalties may be imposed, and permits may be revoked as provided in Sections 3.24.050, 3.24.060, and 3.24.067.](#)

[3.24.067 – Violations; revocation of STLU permit.](#)

If an STLU owner or operator receives (1) three citations of violation for a particular STLU within any 12-month period, or (2) a citation for a violation of STLU regulations that creates a serious threat to the public health, safety, or welfare, a hearing will be held in accordance with sections 3.24.050 and 3.24.060. At the hearing, the hearing officer may revoke the permit or impose additional conditions on the STLU permit to mitigate the impact of the STLU on the community.

3.24.070 - Report — Remittance of collections.

At the time the return is filed, the full amount of the transient occupancy tax collected during that month shall be remitted to the Finance and Administrative Services Director. All transient occupancy taxes collected by operators under this chapter shall be held in trust for the City by the operator until payment thereof is made to the Finance and Administrative Services Director. The reporting and remittance of collections must comply with the following:

A. Hotel.

1. Monthly remittance. Each operator shall, on or before the last day of each month, prepare and submit to the Finance and Administrative Services Director a return on forms provided by the Finance and Administrative Services Director, stating the total rents charged and received and the amount of transient occupancy tax collected the previous month. By way of example, on November 30th, each operator shall submit to the Finance and Administrative Services Director their return for the period of October 1st through 31st.
2. Returns and payments are due immediately upon any succession of business.

B. STLU.

1. Quarterly remittance. Each operator must prepare and submit to the Finance and Administrative Services Director a return on forms provided by the Finance and Administrative Services Director stating the total rents charged and received and the amount of the transient occupancy tax collected the previous quarter. Taxes are due within 30 calendar days of the end of each quarterly period listed below:

Jan—March, due by April 30

April—June, due by July 31

July—September, due by October 31

Oct—December, due by January 31

2. Returns and payments are due immediately upon any succession of business.

Section 4. Changes to Chapter 3.24, Article III.

Chapter 3.24, Article III, of the code is amended to read as follows:

Article III. - Short-term Lodging Units

3.24.169 - Purpose and findings.

- A. The City Council hereby finds that inadequately regulated STLUs present a current threat to the public welfare.
 1. ~~An ever increasing number of tourists~~Large numbers of people renting short-term lodgings ~~is~~can severely ~~escalating~~escalate the demand for City services and ~~creating~~create adverse impacts in residential neighborhoods; and
 2. The City and sheriff have received ~~and continue to receive~~ numerous complaints regarding excessive noise, parking, litter, disorderly conduct, and concerns regarding security and public safety at short-term lodgings; and
 3. The City desires to protect neighborhoods from adverse effects resulting from the operation of short-term lodgings and to ensure that the City collects the transient occupancy taxes; and
 4. The proliferation of short-term lodgings impacts the residential character of several neighborhoods; and
 5. The commercialization of residential properties and the proliferation of short-term lodgings in particular drive up rents by reducing the stock of affordable housing; and
- B. The purpose of this chapter is to establish an STLU-permitting process and operational requirements to minimize potential adverse impacts of STLUs on neighborhoods to promote the health, safety, and welfare of renters, guests, and neighbors.

3.24.170 - Agency.

An owner may retain an agent to comply with the requirements of this chapter, including, without limitation, the filing of all reports and remittance of transient occupancy taxes, the filing of an application for an STLU permit, the management of the STLU, and the compliance with the conditions of the STLU permit ([except for those conditions that the owner alone may satisfy, such as the occupancy requirement in section 3.24.197](#)). An STLU permit shall only be issued to the STLU owner. The owner is responsible for compliance with the provisions of this chapter; the failure of an agent, including an operator, to comply with this chapter is non-compliance by the owner.

3.24.180 - Permit required.

- A. A lodging unit shall not be rented for a short term without a valid STLU permit for that unit, issued in accordance with this chapter. Previously issued vacation rental property permits do not satisfy this requirement [and are void as of April 1, 2016](#).
- B. No person or entity shall advertise or rent an STLU within the City of San Clemente without a valid STLU permit for that unit, issued in accordance with this chapter. For purposes of this section, advertising includes announcing or portraying in any medium, including electronic medium, that a residential property is available or can be made available for occupancy by a renter on a short-term basis.
- C. [An STLU permit is owner-specific and does not run with the land. Any change of ownership terminates an existing STLU permit and requires a new STLU permit to be issued to the new owner for continued operation of the STLU.](#)

3.24.185 - Limitation on rental period.

[Except as provided in Section 3.24.280, a lodging unit shall not be rented for a short term for an aggregate period of more than ninety \(90\) nights per calendar year.](#)

3.24.197 - Owner-occupancy requirement.

[Except as provided in section 3.24.280, the STLU owner must **live in that specific residential unit for at one \(1\) night during the calendar year for which the STLU permit is issued.** For purposes of this section, "STLU owner" means \(1\) a natural person holding a fee interest in the STLU or \(2\) a natural person with a leasehold interest of one year or more that authorizes the lessee to sublet the residential unit as a STLU. For purposes of this section "STLU owner" includes a natural person with a controlling interest in a corporate entity if the entity holds legal title to the property, as well as an individual that is a named beneficiary if the property is held in trust.](#)

An STLU owner owning a multi-unit building may lease the units as STLUs if the STLU owner lives on-site in one of the other units year round.

3.24.190 - Application for an STLU permit.

The owner or owner's agent shall file an application for an STLU permit with the Finance and Administrative Services Director on forms provided by the City. The application shall contain the following information:

1. ~~A.~~ The name, address, telephone number, and email address of the STLU owner.
2. ~~B.~~ The name, address, telephone number, and email address of the operator for the STLU.
3. ~~C.~~ The street address and telephone number for the STLU itself.
4. ~~D.~~ The approximate square footage, the number of bedrooms in the STLU, and the maximum numbers of overnight renters in the STLU. The maximum number of overnight renters in the STLU shall not exceed two persons per legal bedroom plus two persons. In no event may it exceed the maximum allowed under Title 15 of the code.
- ~~E.~~ ~~Evidence of a valid business license issued by the City for the separate business of operating the STLU. A separate business license is required for each location.~~
5. ~~F.~~ A diagram or photograph of the premise property showing the number and location of designated, legal on-site parking spaces, and the maximum number of vehicles allowed for overnight renters in the STLU.
6. If the STLU has already previously operated as such, a transient occupancy registration certificate demonstrating that the STLU operator has complied with all its TOT obligations under chapter 3.24 of the code.
7. If the proposed STLU is governed by a homeowners' association (HOA), express written approval of the proposed STLU use by the HOA's governing body.
8. ~~G.~~ Such other information as the Finance and Administrative Services Director deems reasonably necessary to administer this chapter.

3.24.200 - Denial of STLU permit.

The Finance and Administrative Services Director shall issue an STLU permit if each of the following is true:

1. ~~A.~~ the owner has fully complied with ~~section 3.24.190,~~the provisions of this chapter.
2. ~~B.~~ the STLU property has not previously been the subject of an STLU permit that was revoked under section ~~3.24.230~~3.24.067 within the previous 24 months, and
3. ~~C.~~ the STLU owner has not previously held an STLU permit that was later revoked under section ~~3.24.230~~3.24.067.

3.24.210 - Filing fee.

An application for an STLU permit must be accompanied by payment of the required fee, the amount of which is established by resolution of the City Council.

3.24.220 - Conditions.

- A. STLU owners must comply with all STLU-permit conditions.
- B. All STLU permits issued under this chapter are subject to the following standard conditions:
 1. Proof that the STLU owner has satisfied the requirements of section 3.24.197, if applicable. The burden is on the STLU-permit applicant (the STLU owner) to provide documentary evidence that he or she satisfied this requirement.
 - ~~2.~~ The STLU owner shall, by written agreement with the renter, limit overnight occupancy of the STLU to the maximum number of renters. The number of renters is limited by the number ~~requested~~approved in the STLU ~~application~~permit.
 3. The STLU shall not be rented for more than ninety (90) nights per calendar year, except as provided in subsection
 - ~~4.~~ STLU renters and their guests shall not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of this code or any state or federal law or regulation, including, but not limited to, those pertaining to noise, disorderly conduct, the consumption of alcohol, or the use of illegal drugs. The STLU owner shall ensure compliance with this provision.
 - ~~5.~~ STLU renters and their guests shall only utilize the designated, legal on-site parking spaces; they shall not have more vehicles at the STLU property than the number of designated, legal parking spaces; and the STLU owner shall give notice to renters and contractually bind them to observe this requirement in a written rental agreement.

- ~~46~~. Upon notification that an STLU renter or a renter's guest has violated subsection 3.24.220(B)(2) or subsection 3.24.220(B)(3) above, the STLU owner shall promptly notify the renter of the violation and take such action as is necessary to prevent a recurrence. It is not intended that the owner act as a ~~peace~~law-enforcement officer or place himself or herself in harm's way.
- ~~57~~. The STLU owner shall provide a 24-hour emergency contact that will respond, on-site if requested, within 30 minutes to complaints about the condition, operation, or conduct of STLU renters or their guests.
- ~~68~~. The STLU owner shall comply with all applicable codes regarding fire, building construction and safety, and all other relevant laws, regulations and ordinances. The City's failure to inspect STLUs does not constitute a waiver of its right to perform future inspections.
- ~~89~~. The STLU owner shall post a copy of the permit and house rules that comply with the conditions set forth in this section in a conspicuous place in the STLU.
- ~~910~~. An STLU may only be used for overnight lodging. It shall not be used for a wedding, bachelor or bachelorette party, or other party, conference, or any other similar event.
- ~~4011~~. Advertising.
- a. All advertising for an STLU shall include the City-issued STLU permit number and associated business-license number.
 - b. Owner shall notify City as to each and every publication, website, or other advertising forum where owner's STLU is advertised.
 - c. No on-site exterior signs may be posted advertising an STLU.
 - d. The City website will include a list of all currently-permitted STLUs. Owner shall ensure that the City has current and accurate information throughout the term of the permit. Owner shall inform the City of any change to information on the permit application within 10 business days of the change. A failure to timely report a change is a violation of the permit condition.
- ~~4412~~. Each STLU owner shall, upon issuance of ~~the~~any STLU permit or upon any approved change to an existing STLU permit, provide written notice to the Finance and Administrative Services Director and to all neighboring property owners (within a radius of 300 feet of the STLU property) the following information:

- a. The names of the STLU owner and of the STLU operator (if not the owner), including telephone numbers at which those parties may be reached on a 24-hour basis.
- b. The City's Code Enforcement telephone number by which members of the public may report violations of this chapter.
- c. The maximum number of renters that are permitted to stay in the unit.
- d. The maximum number of vehicles that are allowed to be parked at the property.

~~42~~13. An STLU permit is valid for 12 months from the date issued. A new STLU permit must be applied for and secured each year to continue to operate. The notice requirements in subsection 3.24.220(B)(11) above must be satisfied each year with each new permit issuance or change.

~~43~~14. The STLU owner shall timely comply with section 3.24.070. Owner shall timely submit the filing whether or not the STLU was rented during the reporting period and transient occupancy tax was collected.

~~44~~15. The Finance and Administrative Services Director may request access to an STLU or to records related to the use and occupancy of the unit for the purpose of inspection or audit to determine that the objectives and conditions of this chapter are being fulfilled. On such request, the STLU owner shall provide access to the Director during normal business hours.

~~3.24.230 – Violations; revocation of STLU permit~~

~~If an STLU owner or operator receives four citations of violation for a particular STLU within any 12-month period, a hearing will be held in accordance with sections 3.24.050 and 3.24.060. At the hearing, the hearing officer may revoke the permit or impose additional conditions on the STLU permit to mitigate the impact of the STLU on the community.~~

3.24.240 - Penalties for failure to remit tax when due.

- A. Original Delinquency. An operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of the ten percent (10%) of the amount of tax.
- B. Continued Delinquency. An operator who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.

- C. Fraud. If the Finance and Administrative Services Director determines the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 3.24.240(A) and (B) of this section.
- D. Interest. In addition to the penalties imposed, any owner or agency who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half percent a month on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section becomes a part of the tax required to be paid by this chapter.

~~**3.24.250 - Procedure for imposition of penalties and revocation.**~~

~~Penalties may be imposed, and permits may be revoked, only in the manner provided in Sections 3.24.050 and 3.24.060, above. All penalties, assessments, and taxes must be paid prior to filing a request for a hearing.~~

3.24.260 - Permits and fees not exclusive.

Permits and fees required by this chapter are in addition to any other license, permit, or fee required by another chapter of this code. The issuance of any permit pursuant to this chapter does not relieve the owner and operator of the obligation to comply with all other provisions of this code pertaining to the use and occupancy of the STLU or the property on which it is located.

3.24.270 - Penalty.

- A. Any person violating the provisions of this chapter by operating an STLU without a valid STLU permit is guilty of a misdemeanor.
- B. Any person advertising an STLU for which there is no valid STLU permit or associated business license is guilty of a misdemeanor.

3.24.280 - Amortization and amnesty period.

~~An STLU owner must apply for an STLU permit under this chapter within 60 days after the effective date of this ordinance. STLU owners who failed to obtain a transient occupancy registration certificate under this chapter prior to the effective date of this ordinance, may do so without penalty, notwithstanding other provisions of this chapter, if an application for the certificate is filed no later than 60 days after the effective date of the ordinance codified in this section.~~

- A. Each STLU owner must apply for an STLU permit under this chapter by April 1, 2016.

- B. The provisions of section 3.24.185 and 3.24.197 shall not apply until January 19, 2021 to STLU applicants that were legally operating STLUs on January 19, 2016.

3.24.290 - Recording notice of lien.

If any amount required to be remitted or paid to the City under this chapter is not remitted or paid when due, the Finance and Administrative Services Director may, within four (4) years after the amount is due, file for and record in the office of the county recorder a notice of lien specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the Finance and Administrative Services Director of the owner or agent liable for the same and the fact that the Finance and Administrative Services Director has complied with all provisions of the chapter in the determination of the amount required to be remitted and paid. From the time of the filing, the amount required to be remitted, together with penalties and interest, constitutes a lien upon all real property in the county owned by the owner and/or agent or afterwards and before the lien expires acquired by him. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the notice of lien unless sooner released or otherwise discharged.

Section 5. ~~Changes~~Change to chapter 5.04.

~~The definition of "Apartments, motels, hotels, rooming houses, cottages and buildings having rental spaces" in section 5.04.010 is deleted in its entirety.~~

A new section 5.04.340 is added to read as follows:

5.04.340 - Roommate Rentals.

- A. A "roommate rental" is exempt from the business-license requirements of this title. "Roommate rental" means a home ~~that is~~where all of the following occur:
1. ~~Occupied by~~The owner, ~~and~~ occupies the property.
 2. Three or fewer rooms are rented to three or fewer persons~~;~~
 3. Rentals are on a 30-day or longer basis~~;~~
 4. Rentals are under one or more oral or written contracts.

Section 6. ~~Changes to section 5.08.040.~~Business-license fee for one- and two-unit lodgings

~~The following language is deleted from section 5.08.040:~~

Subsection 5.08.040(A) is amended to add the following sentence immediately following “Apartments, hotels, motels, rooming houses, auto courts, rooms, bungalow courts, buildings having rental spaces:” —

31 or 2 units or spaces~~\$25.00 ;b1;plus \$2.00 per space over 3.~~ Amount set by City Council resolution.

And

~~Boarding houses.~~

~~Serving 3 to 15 persons30.00-~~

~~Serving over 15 persons50.00.~~

Section 7. New section 8.48.040(J).

Subsection (J) is added to section 8.48.040 of Chapter 8.48 regarding General Noise Regulations to read as follows:

J. Whether the noise can be heard from a distance of 20 feet or more from the noise source, or from a distance determined to be reasonable by the Officer (as defined in section 9.16.010(G) of the code).

Section 8. Clarifying meaning of “Peace Officer.”

All references to “Peace Officer” in Chapter 9.16 of the code regarding Loud and Unruly Gatherings are replaced with “Officer.”

Section 9. Changes to chapter 9.16.010.

Subsection (A) of section 9.16.010 is changed to read as follows:

“Loud or Unruly Gathering” means a gathering of two or more persons on or at any residential unit for a social occasion or other activity at which loud or unruly conduct occurs and results in a public nuisance or a threat to the public health, safety, general welfare, or quiet enjoyment of residential property or nearby public property.

1. As used in this chapter, “loud or unruly” conduct includes, without limitation, any or all of the following:
 - a. Noise in excess of that permitted by the city’s noise ordinance and/or general plan;
 - b. Obstruction of public and private streets by crowds or vehicles;
 - c. Obstruction of rights-of-way by people or vehicles;

- d. The service of alcohol to minors;
 - e. Possession and/or consumption of alcohol by minors;
 - f. Assaults, batteries, fights, domestic violence or other disturbances of the peace;
 - g. Vandalism;
 - h. Litter;
 - j. Urinating or defecating in public; or
 - k. Public drunkenness.
2. Loud or unruly conduct does not include any activity that is:
- a. Protected by Article 1, Section 4 of the California Constitution;
 - b. Protected by the First or Fourteenth Amendments to the United States Constitution; or
 - c. Regulated by the California Alcoholic Beverage Control Act.

A new subsection (G) is added to section 9.16.010 of the code to read as follows:

- G. "Officer" means an officer as defined by Government Code section 50920 or a City officer or employee as identified in section 1.12.010(A) of the code.

Section 10. New chapter 9.20.

A new chapter is added to the code to read as follows:

Chapter 9.20 - REPEAT NUISANCE SERVICE-CALL FEE.

9.20.010 Purpose.

- A. The purpose of this section is to protect the public health, safety, general welfare, and quiet enjoyment of residential property by preventing and abating repeat service-response calls by the City to the same property or location for nuisance, which divert police and other public-safety services from other city residents. It is the intent of the City to impose and collect service-call fees from the owner or occupant, or both, of property to which peace officers or city officers or employees must repeatedly respond to address a nuisance. The repeat nuisance service-call fee imposed by this chapter is intended to cover the excess cost above the cost of providing normal law- or code-enforcement services and police protection citywide.

- B. The City may enforce this chapter in addition to any other remedy that it has under the code. Nothing in this chapter precludes concurrent or subsequent enforcement of any other provision of this code, including, but not limited to those of Titles 5 (business licenses and regulations), 8 (health and safety), and 9 (public peace, morals and welfare).

9.20.020 Scope and application.

This section applies to all owners and occupants of private property that is the subject or location of the repeat nuisance service-call by the city. This section applies to any repeat nuisance service call made by an Officer, as that term is defined in section 9.16.010(G).

9.20.030 Definition of nuisance service-call.

- A. "Nuisance service-call" means any visit by an Officer to private property that results in a written warning or citation to the property owner or occupant for a nuisance under the code.
- B. The written warnings or citations shall:
1. ~~(1)~~ State the specific nuisance at the property and the date of occurrence;
 2. ~~(2)~~ State that, in addition to the city's right to seek other legal remedies or actions for abatement of the nuisance, the owner and occupant may be subject to a repeat nuisance service-call fee if a third nuisance service-call is made to the property within 365 days of the date of the notice; and
 3. ~~(3)~~ Be served personally on the owner and occupant at the time of the visit or ~~by~~ within five days of the visit, by U.S. mail to the address of the subject property and, if different, to the owner's address of record on the county property-tax rolls.

9.20.040 Repeat nuisance service-call fee.

- A. The City shall impose a repeat nuisance service-call fee on both the owner and the occupant of private property if the City has made two or more nuisance service-calls to the property during the preceding 365 days. This fee is in addition to any other fee lawfully imposed under this code or state or federal law.
- B. The amount of the repeat nuisance service-call fee shall be set forth by City Council resolution. All repeat nuisance service-call fees imposed and charged against the owner and occupant under this section are deemed delinquent 30 days after the City mails a billing statement to the address of the subject property and, if different, to the owner's address of record on the county property-tax rolls. Delinquent payments are subject to late penalty equal to ten percent the amount due.

9.20.050 Right to appeal repeat nuisance service-call fee.

In the billing statement for an imposed repeat nuisance service-call fee, the City shall inform the owner and occupant of his or her right to a hearing on the alleged repeat nuisance service-calls. The owner or occupant may request a hearing by serving a written request for hearing on the City Clerk within seven calendar days after the statement was mailed. The hearing shall be conducted in accordance with section 1.20.080 (Administrative hearing).

9.20.060. Legal remedies not exclusive.

Nothing in this section shall be construed to limit the City's other available legal remedies for any violation of the law that may constitute a nuisance service-call.

Section 11. All existing provisions of the code that are repeated herein are repeated only to aid decisionmakers and the public in ~~understand~~understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

Section 12. Severability. If any part of this ordinance is for any reason determined to be invalid or unconstitutional by any court of competent jurisdiction, it has no effect on the validity of the rest of the ordinance. The City Council hereby declares that it would have adopted this ordinance and each part of it irrespective of the fact that any part of is declared invalid or unconstitutional.

~~**Section 13.** Effective Date. This ordinance is adopted as an urgency ordinance under Government Code sections 36934 and 36937 to protect the public peace, health, and safety, and so takes effect immediately on its adoption in accordance with section 36937(b). The facts that support this finding of urgency are set forth in Section 1 above.~~

~~**Section 14.** Certification and Publication. The City Clerk shall certify to the passage and adoption of this ordinance by at least a four-fifths vote of the City Council, whereupon this ordinance takes effect and shall be enforced. The Clerk shall cause the adopted ordinance to be published as required by law.~~

[Signatures on following page]

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2016.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

APPROVED AS TO FORM:

City Attorney

Summary report:	
Litéra® Change-Pro 7.5.0.135 Document comparison done on 1/19/2016 3:54:44 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://iManage/iManage/22304945/12	
Modified DMS: iw://iManage/iManage/22304945/20	
Changes:	
<u>Add</u>	104
Delete	78
Move From	10
<u>Move To</u>	10
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	202

ATTACHMENT 2

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING SAN CLEMENTE MUNICIPAL CODE SECTION 1.16.030 REGARDING VIOLATIONS OF STATE OR FEDERAL LAW, CHAPTER 3.24, ARTICLES I AND III, REGARDING SHORT-TERM LODGINGS, TITLE 5 REGARDING BUSINESS LICENSES, SECTION 8.48.040 REGARDING GENERAL NOISE REGULATIONS, AND SECTION 9.16.010 REGARDING LOUD AND UNRULY GATHERINGS, AND ADDING CHAPTER 9.20 REGARDING REPEAT NUISANCE SERVICE-CALL FEE

WHEREAS, new, internet-based technologies have dramatically altered the nature of the short-term rental industry in terms of the offering and acquisition of rentals, the types of clientele attracted to short-term rentals in residential zones, and the enforcement of transient occupancy tax collection; and

WHEREAS, an ever-increasing number of people renting short-term-lodgings is severely escalating the demand for City services and creating adverse impacts in residential zones; and

WHEREAS, the City and sheriff have received and continue to receive numerous complaints regarding excessive noise, parking, litter, disorderly conduct, and concerns regarding security and public safety at short-term lodgings; and

WHEREAS, the City, by virtue of the police powers delegated to it by the California Constitution, has the authority to enact laws to promote the health, safety, and general welfare of its residents; and

WHEREAS, the negative impacts of short-term lodgings are not a problem that is isolated to the City but are a worldwide issue that many cities have recently regulated. The problem has regional implications affected by the regulatory actions of neighboring cities that could escalate the negative impacts of short-term lodgings in residential zones if the City does not adopt appropriate regulations to promote the health, safety, and general welfare of its residents; and

WHEREAS, the occurrence of loud or unruly gatherings on private property is a threat to the public health, safety, general welfare, and quiet enjoyment of residential property, as well as to the quiet enjoyment of residential property; and

WHEREAS, law-enforcement response to loud and unruly gatherings diverts law-enforcement resources and might leave other areas of the City with inadequate law-enforcement protection. Responses to such gatherings result in a disproportionate expenditure of public-safety resources; and

WHEREAS, persons held responsible for abetting or allowing loud or unruly gatherings are more likely to properly supervise or stop such conduct at gatherings held on property in their possession or under their control; and

WHEREAS, the intent of these amendments is to protect the public health, safety, general welfare, and quiet enjoyment of residential property, rather than to punish; and

WHEREAS, initial analysis of nuisance complaints at short-term lodgings revealed that the City's standard for excessive noise needs clarifying; and

WHEREAS initial analysis also suggests that the role of City officers in regulating nuisances needs clarifying; and

WHEREAS, regulation of repeat nuisance service-calls is intended to shape owner and renter expectations of conduct at and operating standards for short-term lodgings, so to put owners and potential renters on notice before the latter make their summer reservations, the repeat nuisance service-call regulation also needs to take effect before peak-season reservations; and

WHEREAS, the City has a strong interest in preventing fraud against businesses that lend against or that insure residential properties in San Clemente; and

WHEREAS, inadequate supervision of short-term lodgings can also put transient renters themselves at risk of physical, emotional, or financial harm, including fraud; and

WHEREAS, the City desires to protect neighborhoods from nuisances and other adverse effects resulting from the improper operation of short-term lodgings and to ensure that the City collects transient occupancy taxes; and

WHEREAS, the proliferation of short-term lodgings impacts the residential character of several neighborhoods; and

WHEREAS, numerous residents have expressed public-safety and general health and welfare concerns about adverse effects of short-term lodgings; and

WHEREAS, the commercialization of residential properties and the proliferation of short-term lodgings in particular drive up rents by reducing the stock of affordable housing; and

WHEREAS, short-term lodgings are rented for less than 30 days with the vast majority of those rentals occurring during the summer months when demand for parking and City services is greatest; and

WHEREAS, the peak rental season is approaching and people are already making reservations for short-term lodgings; and

WHEREAS, many people are reserving short-term lodgings in San Clemente now for the spring and summer months; the proliferation of vacation-rental websites has

allowed more people to reserve more units sooner than in years past; the rush to reserve short-term lodgings is starting earlier than it has before; and every week, more rentals are being reserved. The City must regulate short-term lodgings and put owners and potential renters on notice as soon as possible to prevent the harms that have often accompanied this use; and

WHEREAS, increased demand for City services from short-term lodgings overburdens and threatens the City's ability to provide such services; and

WHEREAS, under the existing municipal code all short-term lodgings are subject to transit-oriented tax under sections 3.24.010 and 3.24.020, either as a *hotel* or as a *vacation rental property*, and under the proposed code revisions below, using new definitions of *hotel* and *STLU*, all short-term lodgings remain subject to the same tax; and

WHEREAS, the adoption of the proposed regulations is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15301 (Existing Facilities) of the State CEQA Guidelines because allowing short-term lodgings that meet the standards adopted here will not involve an expansion of use beyond that currently existing; and further is exempt under section 15061(b)(3) because it can be seen with certainty that adoption of the Ordinance does not result in a physical change in the environment. Implementation of the regulations does not increase residential density or the intensity of use as the standards adopted herein are consistent with otherwise allowable residential uses and activities.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1. Findings.

The City Council here incorporates and adopts the foregoing recitals and accompanying staff report as findings as though they were fully set forth herein.

Section 2. Clarification of Existing Code.

The first sentence in section 1.16.030 of the code is amended to read as follows:

Any activity, object, establishment, property, or facility operated, conducted, or maintained contrary to the provisions of the San Clemente Municipal Code or state or federal law or regulation shall be, and the same is hereby declared to be, unlawful and a public nuisance.

Section 3. Changes to Chapter 3.24, Article I.

Chapter 3.24, Article I, of the code is amended to read as follows:

3.24.010 - Definitions.

For the purposes of this chapter, the following words and phrases have the meanings respectively ascribed to them by this section:

“Agent” means a duly authorized individual, company, or legal entity engaged by the owner of a lodging unit to represent, manage, or oversee the operations of the lodging unit on behalf of the owner.

“City Manager” means the City Manager of the City of San Clemente or his or her respective assignees.

“Finance and Administrative Services Director” means the Finance and Administrative Services Director of the City of San Clemente, or his or her duly authorized designee.

“Guest” means any person (including an invitee) visiting a renter of a lodging unit. A guest is not authorized by the lease to sleep or stay overnight in the unit.

“Hotel” means any structure, or any portion of any structure, containing 6 or more short-term lodging units.

“Lodging unit” means a structure, or any portion of a structure, that is occupied or that is intended or designed for occupancy for lodging or sleeping purposes. It is a commercial use. But “lodging unit” does not include a use that may not be treated as a business under state or federal law.

“Occupancy” means the use or possession, or the right to the use or possession, of any lodging unit for lodging or sleeping purposes.

“Operator” means the person who is the proprietor of the hotel or STLU (defined in this section), whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than that of an employee, the managing agent is also deemed an operator for the purposes of this chapter and has the same duties and liabilities as the principal. Compliance with the provisions of this chapter by either the principal or the managing agent is considered to be compliance by both.

“Owner” means a person that holds legal or equitable title to a lodging unit.

“Person” means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint-stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

“Rent” means the consideration charged, whether or not received, for the occupancy of space in a lodging unit, valued in money, whether to be received in money,

goods, labor, or otherwise, including all receipts, cash, credits, and property and services of any kind, without any deduction therefrom.

“Renter” means a person, that rents or occupies a lodging unit and who is authorized to sleep and stay there overnight.

“Short term” means for a period of 29 or fewer consecutive calendar days. When applied to lodging, “short-term” refers to the duration of occupancy.

“Single housekeeping unit” means that the occupants of a dwelling unit have established ties and familiarity with each other, jointly use common areas, interact with each other, share meals, household activities, and expenses and responsibilities. Membership in the single housekeeping unit is fairly stable as opposed to transient; members have some control over who becomes a member of the household, and the residential activities of the household are conducted on a nonprofit basis. There is a rebuttable presumption that integral facilities and uses do not constitute single housekeeping units. Additional indicia that a household is not operating as a single housekeeping unit include but are not limited to: the occupants do not share a lease agreement or ownership of the property; members of the household have separate, private entrances from other members; members of the household have locks on their bedroom doors; members of the household have separate food-storage facilities, such as separate refrigerators.

“STLU” means short-term lodging unit other than a hotel, as those terms are defined by this section.

“Transient” means a person who exercises occupancy or is entitled to residential occupancy by reason of concession, permit, right of access, license, or other agreement for a period of 29 or fewer consecutive calendar days, counting portions of calendar days as full days. Any such person is deemed to be a transient until the 29-day period expires unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. For purposes of this chapter, the changing of rooms in a structure or property does not, by itself, cause a break in an otherwise consecutive period of occupancy. “Transient” does not apply to any of the following:

1. a person who by lease or other enforceable written agreement obtains an exclusive legal right to occupy a residential property or portion thereof for more than 29 consecutive calendar days,
2. a person who by lease or other enforceable written agreement obtains an exclusive legal right to occupy a residential property or portion thereof for an indeterminate period but who is required to give at least 30 days advanced notice of termination of his or her exclusive right of occupancy, or
3. a person who makes a non-reimbursable payment for the right to occupy any residential property for more than 29 days.

“Transient Occupancy Tax” or “TOT” means that tax levied by the City and collected by the operator under this chapter.

3.24.020 - Levy and collection of tax.

- A. For the privilege of occupancy in any hotel or STLU, each transient is subject to and must pay a tax in the amount of 10 percent of the rent charged by the operator. Such tax constitutes a debt owed by the transient to the City, which is extinguished only by payment. The transient must pay the tax to the operator of the hotel or STLU when the rent is paid.
- B. If the room at the hotel or STLU is complementary, and is provided as consideration for a service provided to the hotel or the operator or for promotional or marketing purposes, the deemed rent is the higher of (i) the value of the services received or (ii) the average rent of all of the rooms in the hotel on the day that the room was provided. All unpaid tax is due when the transient ceases to occupy space in the hotel, regardless of whether the operator collects, or is able to collect, the full amount of the rent owed.
- C. If a room at the hotel or STLU is cancelled prior to occupancy, and the person canceling is charged the full room rate (e.g., the person is charged for occupancy even though the person might not occupy the room), the amount charged is the rent, and the operator shall collect the transient occupancy tax on that amount and pay it to the City.
- D. If the rent for use of an STLU is reduced or waived in consideration for a service provided to the STLU, its operator or owner, or for promotional or marketing purposes, then the deemed rent is the higher of (i) the value of the services received or (ii) the advertised rate of the STLU for the period of time that the STLU was so occupied. In addition, if the rent for use of an STLU is reduced or waived for any other reason, then the deemed rent is the advertised rate of the STLU for the period of time that it was so occupied unless the operator executes under penalty of perjury and submits to the Finance and Administrative Services Director a completed form that identifies the name, permanent address, telephone number, and contact information for each transient who occupied the STLU; the period or periods of time during which the transient so occupied the STLU; and a brief explanation of the reasons for the reduction or waiver of rent (e.g., discount to facilitate a rental in the ordinary course of business, rental to a family member, etc.). The forms for reduced or waived rents shall be available at the office of the City Finance and Administrative Services Director.
- E. Refusal or failure on the part of the transient to pay the transient occupancy tax due under this chapter does not relieve the transient of its obligation to pay such tax, and the transient remains liable to the City until all such tax has been paid.

3.24.030 - Exemptions from taxation.

- A. The following persons are exempt from paying the transient occupancy tax imposed by this chapter:
1. Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax;
 2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;
 3. The owner of the STLU while occupying the property.
- B. Exemptions may only be granted if the operator completes an exemption claim form under penalty of perjury when rent is collected. The exemption claim form shall be available at the office of the Finance and Administrative Services Director. After the Director reviews and verifies the documents offered in support of the exemption, the Director will determine whether or not the exemption is granted.

3.24.040 - Determination of tax by City on failure of operator to collect or remit tax.

If an operator fails or refuses to collect the tax imposed by this chapter or to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof, the Finance and Administrative Services Director may proceed in such manner as he or she deems best to obtain facts and information on which to base his or her estimate of the tax due, including, but not limited to, an audit of the operator's records. If an audit is deemed necessary by the Finance and Administrative Services Director, the operator is liable for such costs. When the Finance and Administrative Services Director procures such facts and information as he or she can with reasonable effort, the Director shall proceed to determine and assess against the operator the tax, interest, and penalties provided for by this chapter. If such determination is made, the Finance and Administrative Services Director shall give a notice of the amount so assessed in the manner described in section 3.24.050.

3.24.050 - Notice and hearing on violation.

- A. Nonadministrative-Fine Violations. The owner shares responsibility for compliance with this chapter. If there is reason to believe that an operator or owner has violated any of the provisions of this chapter or has been assessed estimated taxes described in section 3.24.040, the City shall provide written notice to the operator and (if not the operator) to the owner. Notice to the operator shall be sent to the operator's address and at the hotel or STLU, and notice to the owner shall be sent to the owner's residence or business address as those property addresses are listed in the City's business license or other records. The notices shall inform the operator and owner of the following:
1. the nature of the alleged violation;

2. the penalties for such violation; and
 3. the owner's and operator's right to request a hearing on the alleged violation, which request shall be in writing and received by the City within 15 days after the date of the violation notice.
- B. If the operator or owner timely requests a hearing, the City Manager shall select a Hearing Officer to preside over the hearing. The City shall provide written notice to both the operator and owner of the date, time, and location of the hearing. The hearing notice shall further state that the owner and operator may present evidence, call witnesses, cross-examine the City's witnesses, and be represented by an attorney at the hearing. The above notwithstanding, the City shall be permitted to present evidence in the form of affidavits in accordance with Government Code section 11514. At the conclusion of the hearing, or as soon thereafter as is practical, the Hearing Officer shall determine, in writing, whether there has been a violation of any ordinance, resolution, or law regulating the operation of the STLU. The written determination shall be provided to the operator at the operator's address and at the STLU address as listed in the City's business license or other records, and it shall be provided to the owner at the owner's residence or business address of record. The operator or owner may appeal the decision of the Hearing Officer to the City Council in the manner provided in section 3.24.060 of this chapter. If a hearing is not timely requested, the existence of the violation is conclusively presumed, and the City Manager or his or her designee shall send to the owner and operator written notice of the penalty imposed.
- C. Administrative-Fine Violations. The City shall follow the notice and hearing procedures established in Chapter 1.20 for any violation subject to the imposition of an administrative fine.

3.24.060 - Appeals.

An owner or operator aggrieved by any decision of the Hearing Officer under subsection 3.24.040(B) of this chapter may appeal to the City Council by filing a notice of appeal with the City Clerk within 15 days of service or mailing of the determination of tax due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator and owner at their last known places of address. The findings of the City Council are final and conclusive and shall be served upon the appellant in the manner prescribed in this chapter for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice. All penalties, assessments, and taxes must be paid prior to filing an appeal.

3.24.065 - Procedure for imposition of penalties and revocation.

Penalties may be imposed, and permits may be revoked as provided in Sections 3.24.050, 3.24.060, and 3.24.067.

3.24.067 – Violations; revocation of STLU permit.

If an STLU owner or operator receives (1) three citations of violation for a particular STLU within any 12-month period, or (2) a citation for a violation of STLU regulations that creates a serious threat to the public health, safety, or welfare, a hearing will be held in accordance with sections 3.24.050 and 3.24.060. At the hearing, the hearing officer may revoke the permit or impose additional conditions on the STLU permit to mitigate the impact of the STLU on the community.

3.24.070 - Report — Remittance of collections.

At the time the return is filed, the full amount of the transient occupancy tax collected during that month shall be remitted to the Finance and Administrative Services Director. All transient occupancy taxes collected by operators under this chapter shall be held in trust for the City by the operator until payment thereof is made to the Finance and Administrative Services Director. The reporting and remittance of collections must comply with the following:

A. Hotel.

1. Monthly remittance. Each operator shall, on or before the last day of each month, prepare and submit to the Finance and Administrative Services Director a return on forms provided by the Finance and Administrative Services Director, stating the total rents charged and received and the amount of transient occupancy tax collected the previous month. By way of example, on November 30th, each operator shall submit to the Finance and Administrative Services Director their return for the period of October 1st through 31st.
2. Returns and payments are due immediately upon any succession of business.

B. STLU.

1. Quarterly remittance. Each operator must prepare and submit to the Finance and Administrative Services Director a return on forms provided by the Finance and Administrative Services Director stating the total rents charged and received and the amount of the transient occupancy tax collected the previous quarter. Taxes are due within 30 calendar days of the end of each quarterly period listed below:

Jan—March, due by April 30

April—June, due by July 31

July—September, due by October 31

Oct—December, due by January 31

2. Returns and payments are due immediately upon any succession of business.

Section 4. Changes to Chapter 3.24, Article III.

Chapter 3.24, Article III, of the code is amended to read as follows:

Article III. - Short-term Lodging Units

3.24.169 - Purpose and findings.

- A. The City Council hereby finds that inadequately regulated STLUs present a current threat to the public welfare.
 1. Large numbers of people renting short-term lodgings can severely escalate the demand for City services and create adverse impacts in residential neighborhoods; and
 2. The City and sheriff have received numerous complaints regarding excessive noise, parking, litter, disorderly conduct, and concerns regarding security and public safety at short-term lodgings; and
 3. The City desires to protect neighborhoods from adverse effects resulting from the operation of short-term lodgings and to ensure that the City collects the transient occupancy taxes; and
 4. The proliferation of short-term lodgings impacts the residential character of several neighborhoods; and
 5. The commercialization of residential properties and the proliferation of short-term lodgings in particular drive up rents by reducing the stock of affordable housing; and
 6. Like hotels, STLUs are a commercial use in residential zones, and inadequate regulation of commercial uses can result in harmful impacts to both neighbors and customers or guests.
- B. The purpose of this chapter is to establish an STLU-permitting process and operational requirements to minimize potential adverse impacts of STLUs on neighborhoods to promote the health, safety, and welfare of renters, guests, and neighbors.

3.24.170 - Agency.

An owner may retain an agent to comply with the requirements of this chapter, including, without limitation, the filing of all reports and remittance of transient occupancy taxes, the filing of an application for an STLU permit, the management of the STLU, and

the compliance with the conditions of the STLU permit (except for those conditions that the owner alone may satisfy, such as the occupancy requirement in section 3.24.187). An STLU permit shall only be issued to the STLU owner. The owner is responsible for compliance with the provisions of this chapter; the failure of an agent, including an operator, to comply with this chapter is non-compliance by the owner.

3.24.180 - Permit required.

- A. A lodging unit shall not be rented for a short term without a valid STLU permit for that unit, issued in accordance with this chapter. Previously issued vacation rental property permits do not satisfy this requirement and are void as of April 1, 2016.
- B. No person or entity shall advertise or rent an STLU within the City of San Clemente without a valid STLU permit for that unit, issued in accordance with this chapter. For purposes of this section, advertising includes announcing or portraying in any medium, including electronic medium, that a residential property is available or can be made available for occupancy by a renter on a short-term basis.
- C. An STLU permit is owner-specific and does not run with the land. Any change of ownership terminates an existing STLU permit and requires a new STLU permit to be issued to the new owner for continued operation of the STLU.

3.24.185 - Limitation on rental period.

- A. Except as provided in Section 3.24.280, an STLU shall not be rented on a short-term basis more than 90 days total in a calendar year.
- B. Short-term home-exchange nights count against the 90-day limit in subsection (A) above. "Home-exchange" means that the STLU owner uses the renter's home while the renter uses the STLU (the STLU owner is not physically present at the STLU during the short-term rental), whether or not money changes hands.
- C. Short-term home-sharing nights do not count against the 90-day limit in subsection (A) above. "Home-sharing" means that the STLU owner is physically present in the STLU during the short-term rental.

3.24.187 - Owner-occupancy requirement.

- A. Except as provided in section 3.24.280, the STLU owner must live in that specific residential unit for at least 14 days during the calendar year for which the STLU permit is issued. For purposes of this section, "STLU owner" means any of the following:
 - 1. a natural person holding a fee interest in the STLU,
 - 2. a natural person with a leasehold interest of one year or more that authorizes the lessee to sublet the residential unit as a STLU,

3. a natural person with a controlling interest in a corporate entity if the entity holds legal title to the property, or
 4. a natural person that is a named beneficiary if the property is held in trust.
- B. Multiple STLU owners may aggregate their respective days of occupancy to satisfy the 14-day owner-occupancy requirement.
- C. An STLU owner owning a multiple lodging units on the same legal parcel may lease up to five of the units as STLUs, and may do so for more than 90 days during the calendar year, if the STLU owner lives on-site in one of the other units year round.

3.24.190 - Application for an STLU permit.

The owner or owner's agent shall file an application for an STLU permit with the Finance and Administrative Services Director on forms provided by the City. The application shall contain the following information:

1. The name, address, telephone number, and email address of the STLU owner.
2. The name, address, telephone number, and email address of the operator for the STLU.
3. The street address and telephone number for the STLU itself.
4. The approximate square footage, the number of bedrooms in the STLU, and the maximum numbers of overnight renters in the STLU. The maximum number of overnight renters in the STLU shall not exceed two persons per legal bedroom plus two persons. In no event may it exceed the maximum allowed under Title 15 of the code.
5. Evidence of a valid business license issued by the City for the separate business of operating the STLU. A separate business license is required for each location.
6. A diagram or photograph of the property showing the number and location of designated, legal on-site parking spaces, and the maximum number of vehicles allowed for overnight renters in the STLU.
7. If the STLU has already previously operated as such, a transient occupancy registration certificate demonstrating that the STLU operator has complied with all its TOT obligations under chapter 3.24 of the code.
8. If the proposed STLU is governed by a homeowners' association (HOA), express written approval of the proposed STLU use by the HOA's governing body.

9. Such other information as the Finance and Administrative Services Director deems reasonably necessary to administer this chapter.

3.24.200 - Denial of STLU permit.

The Finance and Administrative Services Director shall issue an STLU permit if each of the following is true:

1. the owner has fully complied with the provisions of this chapter.
2. the STLU property has not previously been the subject of an STLU permit that was revoked under section 3.24.067 within the previous 24 months, and
3. the STLU owner has not previously held an STLU permit that was later revoked under section 3.24.067.

3.24.210 - Filing fee.

An application for an STLU permit must be accompanied by payment of the required fee, the amount of which is established by resolution of the City Council.

3.24.220 - Conditions.

- A. STLU owners must comply with all STLU-permit conditions.
- B. All STLU permits issued under this chapter are subject to the following standard conditions:
 1. The STLU owner must satisfy the requirements of section 3.24.187, if applicable. The burden is on the STLU-permit applicant (the STLU owner) to provide documentary evidence, on request by the City, that he or she has satisfied this requirement.
 2. The STLU owner shall, by written agreement with the renter, limit overnight occupancy of the STLU to the maximum number of renters. The number of renters is limited by the number approved in the STLU permit.
 4. STLU renters and their guests shall not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of this code or any state or federal law or regulation, including, but not limited to, those pertaining to noise, disorderly conduct, the consumption of alcohol, or the use of illegal drugs. The STLU owner shall ensure compliance with this provision.
 5. STLU renters and their guests shall only utilize the designated, legal on-site parking spaces; they shall not have more vehicles at the STLU property than the number of designated, legal parking spaces; and the STLU owner

shall give notice to renters and contractually bind them to observe this requirement in a written rental agreement.

6. Upon notification that an STLU renter or a renter's guest has violated subsection 3.24.220(B)(2) or subsection 3.24.220(B)(3) above, the STLU owner shall promptly notify the renter of the violation and take such action as is necessary to prevent a recurrence. It is not intended that the owner act as a law-enforcement officer or place himself or herself in harm's way.
7. The STLU owner shall provide a 24-hour emergency contact that will respond, on-site if requested, within 30 minutes to complaints about the condition, operation, or conduct of STLU renters or their guests.
8. The STLU owner shall comply with all applicable codes regarding fire, building construction and safety, and all other relevant laws, regulations and ordinances. The City's failure to inspect STLUs does not constitute a waiver of its right to perform future inspections.
9. The STLU owner shall post a copy of the permit and house rules that comply with the conditions set forth in this section in a conspicuous place in the STLU.
10. An STLU may only be used for overnight lodging. It shall not be used for a wedding, bachelor or bachelorette party, or other party, conference, or any other similar event.
11. Advertising.
 - a. All advertising for an STLU shall include the City-issued STLU permit number and associated business-license number.
 - b. Owner shall notify City as to each and every publication, website, or other advertising forum where owner's STLU is advertised.
 - c. No on-site exterior signs may be posted advertising an STLU.
 - d. The City website will include a list of all currently-permitted STLUs. Owner shall ensure that the City has current and accurate information throughout the term of the permit. Owner shall inform the City of any change to information on the permit application within 10 business days of the change. A failure to timely report a change is a violation of the permit condition.
12. Each STLU owner shall, upon issuance of any STLU permit or upon any approved change to an existing STLU permit, provide written notice to the Finance and Administrative Services Director and to all neighboring property owners (within a radius of 300 feet of the STLU property) the following information:

- a. The names of the STLU owner and of the STLU operator (if not the owner), including telephone numbers at which those parties may be reached on a 24-hour basis.
 - b. The City's Code Enforcement telephone number by which members of the public may report violations of this chapter.
 - c. The maximum number of renters that are permitted to stay in the unit.
 - d. The maximum number of vehicles that are allowed to be parked at the property.
13. An STLU permit is valid for 12 months from the date issued. A new STLU permit must be applied for and secured each year to continue to operate. The notice requirements in subsection 3.24.220(B)(12) above must be satisfied each year with each new permit issuance or change.
 14. The STLU owner shall timely comply with section 3.24.070. Owner shall timely submit the filing whether or not the STLU was rented during the reporting period and transient occupancy tax was collected.
 15. The Finance and Administrative Services Director may request access to an STLU or to records related to the use and occupancy of the unit for the purpose of inspection or audit to determine that the objectives and conditions of this chapter are being fulfilled. On such request, the STLU owner shall provide access to the Director during normal business hours.

3.24.240 - Penalties for failure to remit tax when due.

- A. Original Delinquency. An operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of the ten percent (10%) of the amount of tax.
- B. Continued Delinquency. An operator who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.
- C. Fraud. If the Finance and Administrative Services Director determines the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 3.24.240(A) and (B) of this section.
- D. Interest. In addition to the penalties imposed, any owner or agency who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-

half percent a month on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

- E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section becomes a part of the tax required to be paid by this chapter.

3.24.260 - Permits and fees not exclusive.

Permits and fees required by this chapter are in addition to any other license, permit, or fee required by another chapter of this code. The issuance of any permit pursuant to this chapter does not relieve the owner and operator of the obligation to comply with all other provisions of this code pertaining to the use and occupancy of the STLU or the property on which it is located.

3.24.270 - Penalty.

- A. Any person violating the provisions of this chapter by operating an STLU without a valid STLU permit is guilty of a misdemeanor.
- B. Any person advertising an STLU for which there is no valid STLU permit or associated business license is guilty of a misdemeanor.

3.24.280 - Amortization and amnesty period.

- A. Each STLU owner must apply for an STLU permit under this chapter by April 1, 2016.
- B. The provisions of section 3.24.185 and 3.24.187 shall not apply until January 19, 2021 to STLU applicants that were legally operating STLUs on January 19, 2016.

3.24.290 - Recording notice of lien.

If any amount required to be remitted or paid to the City under this chapter is not remitted or paid when due, the Finance and Administrative Services Director may, within four (4) years after the amount is due, file for and record in the office of the county recorder a notice of lien specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the Finance and Administrative Services Director of the owner or agent liable for the same and the fact that the Finance and Administrative Services Director has complied with all provisions of the chapter in the determination of the amount required to be remitted and paid. From the time of the filing, the amount required to be remitted, together with penalties and interest, constitutes a lien upon all real property in the county owned by the owner and/or agent or afterwards and before the lien expires acquired by him. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the notice of lien unless sooner released or otherwise discharged.

Section 5. Change to chapter 5.04.

A new section 5.04.340 is added to read as follows:

5.04.340 - Roommate Rentals.

- A. A “roommate rental” is exempt from the business-license requirements of this title. “Roommate rental” means a home where all of the following occur:
1. The owner occupies the property.
 2. Three or fewer rooms are rented to three or fewer persons.
 3. Rentals are on a 30-day or longer basis.
 4. Rentals are under one or more oral or written contracts.

Section 6. Business-license fee for one- and two-unit lodgings

Subsection 5.08.040(A) is amended to add the following sentence immediately following “Apartments, hotels, motels, rooming houses, auto courts, rooms, bungalow courts, buildings having rental spaces:” —

1 or 2 units or spaces A revenue-neutral, flat-fee amount set by City Council resolution.

Section 7. New section 8.48.040(J).

Subsection (J) is added to section 8.48.040 of Chapter 8.48 regarding General Noise Regulations to read as follows:

- J. Whether the noise can be heard from a distance of 20 feet or more from the noise source, or from a distance determined to be reasonable by the Officer (as defined in section 9.16.010(G) of the code).

Section 8. Clarifying meaning of “Peace Officer.”

All references to “Peace Officer” in Chapter 9.16 of the code regarding Loud and Unruly Gatherings are replaced with “Officer.”

Section 9. Changes to chapter 9.16.010.

Subsection (A) of section 9.16.010 is changed to read as follows:

“Loud or Unruly Gathering” means a gathering of two or more persons on or at any residential unit for a social occasion or other activity at which loud or unruly conduct occurs and results in a public nuisance or a threat to the public health, safety, general welfare, or quiet enjoyment of residential property or nearby public property.

1. As used in this chapter, “loud or unruly” conduct includes, without limitation, any or all of the following:
 - a. Noise in excess of that permitted by the city’s noise ordinance and/or general plan;
 - b. Obstruction of public and private streets by crowds or vehicles;
 - c. Obstruction of rights-of-way by people or vehicles;
 - d. The service of alcohol to minors;
 - e. Possession and/or consumption of alcohol by minors;
 - f. Assaults, batteries, fights, domestic violence or other disturbances of the peace;
 - g. Vandalism;
 - h. Litter;
 - j. Urinating or defecating in public; or
 - k. Public drunkenness.
2. Loud or unruly conduct does not include any activity that is:
 - a. Protected by Article 1, Section 4 of the California Constitution;
 - b. Protected by the First or Fourteenth Amendments to the United States Constitution; or
 - c. Regulated by the California Alcoholic Beverage Control Act.

A new subsection (G) is added to section 9.16.010 of the code to read as follows:

- G. “Officer” means an officer as defined by Government Code section 50920 or a City officer or employee as identified in section 1.12.010(A) of the code.

Section 10. New chapter 9.20.

A new chapter is added to the code to read as follows:

Chapter 9.20 - REPEAT NUISANCE SERVICE-CALL FEE.

9.20.010 Purpose.

- A. The purpose of this section is to protect the public health, safety, general welfare, and quiet enjoyment of residential property by preventing and abating repeat service-response calls by the City to the same property or location for nuisance, which divert police and other public-safety services from other city residents. It is the intent of the City to impose and collect service-call fees from the owner or occupant, or both, of property to which peace officers or city officers or employees must repeatedly respond to address a nuisance. The repeat nuisance service-call fee imposed by this chapter is intended to cover the excess cost above the cost of providing normal law- or code-enforcement services and police protection citywide.
- B. The City may enforce this chapter in addition to any other remedy that it has under the code. Nothing in this chapter precludes concurrent or subsequent enforcement of any other provision of this code, including, but not limited to those of Titles 5 (business licenses and regulations), 8 (health and safety), and 9 (public peace, morals and welfare).

9.20.020 Scope and application.

This section applies to all owners and occupants of private property that is the subject or location of the repeat nuisance service-call by the city. This section applies to any repeat nuisance service call made by an Officer, as that term is defined in section 9.16.010(G).

9.20.030 Definition of nuisance service-call.

- A. “Nuisance service-call” means any visit by an Officer to private property that results in a written warning or citation to the property owner or occupant for a nuisance under the code.
- B. The written warnings or citations shall:
 - 1. State the specific nuisance at the property and the date of occurrence;
 - 2. State that, in addition to the city’s right to seek other legal remedies or actions for abatement of the nuisance, the owner and occupant may be subject to a repeat nuisance service-call fee if a third nuisance service-call is made to the property within 365 days of the date of the notice; and
 - 3. Be served personally on the owner and occupant at the time of the visit or, within five days of the visit, by U.S. mail to the address of the subject property and, if different, to the owner’s address of record on the county property-tax rolls.

9.20.040 Repeat nuisance service-call fee.

- A. The City shall impose a repeat nuisance service-call fee on both the owner and the occupant of private property if the City has made two or more nuisance service-calls to the property during the preceding 365 days. This fee is in addition to any other fee lawfully imposed under this code or state or federal law.

- B. The amount of the repeat nuisance service-call fee shall be set forth by City Council resolution. All repeat nuisance service-call fees imposed and charged against the owner and occupant under this section are deemed delinquent 30 days after the City mails a billing statement to the address of the subject property and, if different, to the owner's address of record on the county property-tax rolls. Delinquent payments are subject to late penalty equal to ten percent the amount due.

9.20.050 Right to appeal repeat nuisance service-call fee.

In the billing statement for an imposed repeat nuisance service-call fee, the City shall inform the owner and occupant of his or her right to a hearing on the alleged repeat nuisance service-calls. The owner or occupant may request a hearing by serving a written request for hearing on the City Clerk within seven calendar days after the statement was mailed. The hearing shall be conducted in accordance with section 1.20.080 (Administrative hearing).

9.20.060. Legal remedies not exclusive.

Nothing in this section shall be construed to limit the City's other available legal remedies for any violation of the law that may constitute a nuisance service-call.

Section 11. All existing provisions of the code that are repeated herein are repeated only to aid decisionmakers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

Section 12. Severability. If any part of this ordinance is for any reason determined to be invalid or unconstitutional by any court of competent jurisdiction, it has no effect on the validity of the rest of the ordinance. The City Council hereby declares that it would have adopted this ordinance and each part of it irrespective of the fact that any part of is declared invalid or unconstitutional.

[Signatures on following page]

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2016.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

APPROVED AS TO FORM:

City Attorney



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: January 19, 2016

Agenda Item 9A

Approvals:

City Manager JM

Dept. Head _____

Attorney _____

Finance JW

Department: Community Development
Prepared By: Cecilia Gallardo-Daly, Community Development Director

Subject: Proposed Adoption of:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING SAN CLEMENTE MUNICIPAL CODE SECTION 1.16.030 REGARDING VIOLATIONS OF STATE OR FEDERAL LAW, CHAPTER 3.24, ARTICLES I AND III, REGARDING SHORT-TERM LODGINGS, TITLE 5 REGARDING BUSINESS LICENSES, SECTION 8.48.040 REGARDING GENERAL NOISE REGULATIONS, AND SECTION 9.16.010 REGARDING LOUD AND UNRULY GATHERINGS, AND ADDING CHAPTER 9.20 REGARDING REPEAT NUISANCE SERVICE-CALL FEE

Fiscal Impact: Fiscal Impact is unknown at this time. General Fund revenue from short-term rentals has been growing over the past several years, amounting to \$406,500 for FY 2015, and projected at \$500,000 for FY 2016, prior to adoption of any new ordinances. It is estimated that current short-term rental properties that are not owned by San Clemente residents (estimated at approximately 40% of the total number of properties) may not qualify under the new proposed guidelines, which would result in a substantial reduction of revenue. In addition, those properties that are owned by San Clemente residents will also likely be impacted by the new guidelines, but the percentage and revenue impact is difficult to determine. Additional expenses for increased registration, collection, and enforcement efforts would be dependent on the nature and extent of those efforts and may be offset by filing fees, business licenses, fines or other increased revenue, the extent of which are not quantifiable at this time.

Summary: The City has been studying the effects of short-term lodgings, including sober living facilities and vacation rentals on residential neighborhoods throughout the City. As the number of short-term lodging units (STLUs) have increased recently throughout the City, the City and sheriff have received, and continue to receive, an increasing number of nuisance complaints regarding the negative impacts of STLUs on surrounding residential neighborhoods. These negative effects include excessive noise, parking, litter, disorderly conduct, and concerns about security and public safety at STLUs.

The City has considered these nuisance issues in conjunction with how STLUs are currently regulated and has identified changes that need to be made with regard to all rentals, especially as the peak rental season approaches.

Background: New, internet-based technologies have dramatically altered the nature of the short-term rental industry in terms of a STLU owner's ability to market rentals and the ability of renters to secure and pay for STLUs. These on-line technologies have also affected the compatibility of STLUs with surrounding residences, and the enforcement of TOT collection. Ultimately, this had led to a dramatic increase in the number of STLUs in the City and has facilitated accelerated reservations. There are more rentals now and it's increasingly easy to reserve them. Due to these changes in the short-term rental industry, and the subsequent proliferation of STLUs, nuisance issues related to STLUs have become a topic of discussion in recent Council meetings.

Of primary importance are the expressed concerns of many City residents about the overall degradation of the residential character of some neighborhoods as a result of STLUs. Increasing numbers of public comments and resident complaints regarding these uses have created the need for staff and legal counsel to study the current method of regulation to determine which areas of the municipal code need revision.

At the same time, the negative impacts of short-term lodgings are not an isolated problem in the City, but a world-wide issue that many cities have recently regulated. The problem has regional implications affected by the regulatory actions of neighboring cities that could escalate the negative impacts of STLUs in residential zones if the City does not adopt appropriate regulations to promote the health, safety, and general welfare of its residents.

Discussion: Short-term lodgings, including boarding houses, are rented for less than 30 days with the vast majority of those rentals occurring when demand for parking and city services is greatest during the summer months. Substantial nuisance issues related to excessive noise, parking, litter, disorderly conduct, and concerns regarding security and public safety exist and are expected to increase as short-term lodgings proliferate and are rented without appropriate regulation. The City needs to regulate STLUs to prevent these harms.

Initial analysis of nuisance complaints related to STLUs has revealed that the City's standard for excessive noise needs to be clarified to include a specific distance beyond which reasonable noise should not be audible and to allow for an officer of the City to objectively determine whether the noise constitutes a nuisance.

Initial analysis also indicates that the role of City officers in regulating nuisances needs to more clearly define the terms "City Officer" and "Peace Officer" to afford both roles the proper regulating powers and authority.

While many STLUs operate as good neighbors and generate few if any nuisance-related service calls by the City, others repeatedly create nuisances (e.g., excessive noise, trash, disorderly conduct), which in turn requires repeated service calls by city law-enforcement, code-enforcement, fire, and other city services. This diverts valuable resources away from other residents and uses. The frequent or repeat nuisance service-call ordinance will address this concern. The new ordinance is intended to shape owner and renter expectations of conduct at, and operating standards for, STLUs.

The current vacation-rental permit scheme in the transient occupancy tax (TOT) portions of the code presents difficulties in how it defines and regulates TOT-paying entities. To better demarcate responsibility, and to improve accountability, new definitions of short-term lodging unit (STLU), boardinghouse, and hotel are proposed; state and federal exemptions from TOT are acknowledged; and the former vacation-rental permit (now STLU permit) is changed from being perpetual to annual. Standards for conduct and operations are clarified and reaffirmed, and liability is imposed on owners and advertisers that list short-term lodgings for rent if the unit is not permitted by the City.

Finally, it has become clear that many short-term lodging businesses exist in the City that currently evade regulation and do not collect and remit TOT as required by law. It is the City's objective to more clearly establish the City's entitlement to collect transient occupancy taxes in connection with the operation of STLUs.

As the municipal code currently stands, staff cannot ensure that the City's objectives and policies will be implemented properly without these regulations and standards being adopted. The intent of the regulations is to mitigate the negative effects of properties rented short term, such as excessive noise, parking, litter, disorderly conduct, and concerns about security and public safety. Specifically, the new STLU permit establishes conditions that require all STLU owners and operators to conduct their businesses to limit these negative impacts as listed below. Please note, this is not a complete list of the conditions; the complete list is provided in Section 4 of Attachment 1, under the heading, "3.24.220 – Conditions." The new conditions require the following:

1. The STLU owner must be the permanent resident of the STLU that is to be rented short-term. This means that the owner must live in that specific residential unit for at least 275 nights of any given calendar year. However, if the owner owns a multi-unit building and lives in one of the units year round, the owner may register the other residential units in the building as STLUs.
2. Limit occupancy of the rental to allow no more than two people per bedroom, plus two additional people.
3. Maintain the property free of unreasonable noise or disturbances, disorderly conduct, any other violations of the municipal code, or federal or state law.
4. Utilize only the designated legal, on-site parking spaces at the property.
5. Promptly notify all renters and guests of any violations at the property, and take reasonable action to prevent a recurrence.
6. Provide a 24-hour emergency contact that will respond, on-site if requested, within 30 minutes to complaints.
7. Post a copy of the permit and a copy of these conditions in a conspicuous place in the STLU.
8. Only rent the property for the purposes of overnight lodging, not for special events, such as, weddings, bachelor or bachelorette or other parties, conferences, etc.
9. Provide written notice to all neighboring property owners within a radius of 300 feet of the STLU property of the establishment of the vacation rental and provide pertinent contact information.

As noted in permit condition 1, above, the new STLU permit requires the owner of an STLU to reside at the residence for more than 75% of the year. This requirement is proposed in order to promote close supervision of STLUs by their owners in an effort to preserve the character of residential neighborhoods. With corporate or trust ownerships, a primary shareholder, or trust beneficiary, respectively, would be required to permanently reside on the premises for a minimum of 275 nights per year.

In addition, the proposed changes to the Municipal Code would require rental properties to obtain a business license and would establish a fee for properties that have repeat nuisance service calls.

Recommended

Action: Staff recommends that the Council:

STAFF RECOMMENDS THAT the City Council introduce Ordinance No. _____, entitled "An Ordinance Of The City Council Of The City Of San Clemente, California Amending San Clemente Municipal Code Section 1.16.030 Regarding Violations of State or Federal Law, Chapter 3.24, Articles I and Iii, Regarding Short-Term Lodgings, Title 5 Regarding Business Licenses, Section 8.48.040 Regarding General Noise Regulations, and Section 9.16.010 Regarding Loud and Unruly Gatherings, and Adding Chapter 9.20 Regarding Repeat Nuisance Service-Call Fee."

Attachments: 1. Draft Ordinance No. _____

Notification: Notification was completed in accordance with State and local requirements.

ATTACHMENT 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING SAN CLEMENTE MUNICIPAL CODE SECTION 1.16.030 REGARDING VIOLATIONS OF STATE OR FEDERAL LAW, CHAPTER 3.24, ARTICLES I AND III, REGARDING SHORT-TERM LODGINGS, TITLE 5 REGARDING BUSINESS LICENSES, SECTION 8.48.040 REGARDING GENERAL NOISE REGULATIONS, AND SECTION 9.16.010 REGARDING LOUD AND UNRULY GATHERINGS, AND ADDING CHAPTER 9.20 REGARDING REPEAT NUISANCE SERVICE-CALL FEE

WHEREAS, new, internet-based technologies have dramatically altered the nature of the short-term rental industry in terms of the offering and acquisition of rentals, the types of clientele attracted to short-term rentals in residential zones, and the enforcement of transient occupancy tax collection; and

WHEREAS, an ever-increasing number of people renting short-term-lodgings is severely escalating the demand for City services and creating adverse impacts in residential zones; and

WHEREAS, the City and sheriff have received and continue to receive numerous complaints regarding excessive noise, parking, litter, disorderly conduct, and concerns regarding security and public safety at short-term lodgings; and

WHEREAS, the City, by virtue of the police powers delegated to it by the California Constitution, has the authority to enact laws to promote the health, safety, and general welfare of its residents; and

WHEREAS, the negative impacts of short-term lodgings are not a problem that is isolated to the City but are a worldwide issue that many cities have recently regulated. The problem has regional implications affected by the regulatory actions of neighboring cities that could escalate the negative impacts of short-term lodgings in residential zones if the City does not adopt appropriate regulations to promote the health, safety, and general welfare of its residents; and

WHEREAS, the occurrence of loud or unruly gatherings on private property is a threat to the public health, safety, general welfare, and quiet enjoyment of residential property, as well as to the quiet enjoyment of residential property; and

WHEREAS, law-enforcement response to loud and unruly gatherings diverts law-enforcement resources and might leave other areas of the City with inadequate law-enforcement protection. Responses to such gatherings result in a disproportionate expenditure of public-safety resources; and

WHEREAS, persons held responsible for abetting or allowing loud or unruly gatherings are more likely to properly supervise or stop such conduct at gatherings held on property in their possession or under their control; and

WHEREAS, the intent of these amendments is to protect the public health, safety, general welfare, and quiet enjoyment of residential property, rather than to punish; and

WHEREAS, initial analysis of nuisance complaints at short-term lodgings revealed that the City's standard for excessive noise needs clarifying; and

WHEREAS initial analysis also suggests that the role of City officers in regulating nuisances needs clarifying; and

WHEREAS, regulation of repeat nuisance service-calls is intended to shape owner and renter expectations of conduct at and operating standards for short-term lodgings, so to put owners and potential renters on notice before the latter make their summer reservations, the repeat nuisance service-call regulation also needs to take effect before peak-season reservations; and

WHEREAS, the City desires to protect neighborhoods from nuisances and other adverse effects resulting from the operation of short-term lodgings and to ensure that the City collects transient occupancy taxes; and

WHEREAS, the proliferation of short-term lodgings impacts the residential character of several neighborhoods; and

WHEREAS, numerous residents have expressed public-safety and general health and welfare concerns about adverse effects of short-term lodgings; and

WHEREAS, the commercialization of residential properties and the proliferation of short-term lodgings in particular drive up rents by reducing the stock of affordable housing; and

WHEREAS, short-term lodgings are rented for less than 30 days with the vast majority of those rentals occurring during the summer months when demand for parking and City services is greatest; and

WHEREAS, the peak rental season is approaching and people are already making reservations for short-term lodgings; and

WHEREAS, many people are reserving short-term lodgings in San Clemente now for the spring and summer months; the proliferation of vacation-rental websites has allowed more people to reserve more units sooner than in years past; the rush to reserve short-term lodgings is starting earlier than it has before; and every week, more rentals are being reserved. The City must regulate short-term lodgings and put owners and potential renters on notice as soon as possible to prevent the harms that have often accompanied this use; and

WHEREAS, increased demand for City services from short-term lodgings overburdens and threatens the City's ability to provide such services; and

WHEREAS, under the existing municipal code all short-term lodgings are subject to transit-oriented tax under sections 3.24.010 and 3.24.020, either as a *hotel* or as a *vacation rental property*, and under the proposed code revisions below, using new definitions of *hotel* and *STLU*, all short-term lodgings remain subject to the same tax; and

WHEREAS, the adoption of the proposed regulations is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15301 (Existing Facilities) of the State CEQA Guidelines because allowing short-term lodgings that meet the standards adopted here will not involve an expansion of use beyond that currently existing; and further is exempt under section 15061(b)(3) because it can be seen with certainty that adoption of the Ordinance does not result in a physical change in the environment. Implementation of the regulations does not increase residential density or the intensity of use as the standards adopted herein are consistent with otherwise allowable residential uses and activities.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1. Findings.

The City Council here incorporates and adopts the foregoing recitals and accompanying staff report as findings as though they were fully set forth herein.

Section 2. Clarification of Existing Code.

The first sentence in section 1.16.030 of the code is amended to read as follows:

Any activity, object, establishment, property, or facility operated, conducted, or maintained contrary to the provisions of the San Clemente Municipal Code or state or federal law or regulation shall be, and the same is hereby declared to be, unlawful and a public nuisance.

Section 3. Changes to Chapter 3.24, Article I.

Chapter 3.24, Article I, of the code is amended to read as follows:

3.24.010 - Definitions.

For the purposes of this chapter, the following words and phrases have the meanings respectively ascribed to them by this section:

"Agent" means a duly authorized individual, company, or legal entity engaged by the owner of a lodging unit to represent, manage, or oversee the operations of the lodging unit on behalf of the owner.

"City Manager" means the City Manager of the City of San Clemente or his or her respective assignees.

"Finance and Administrative Services Director" means the Finance and Administrative Services Director of the City of San Clemente, or his or her duly authorized designee.

"Guest" means any person (including an invitee) visiting a renter of a lodging unit. A guest is not authorized by the lease to sleep or stay overnight in the unit.

"Hotel" means any structure, or any portion of any structure, containing 6 or more short-term lodging units.

"Lodging unit" means a structure, or any portion of a structure, that is occupied or that is intended or designed for occupancy for lodging or sleeping purposes. "Lodging unit" does not include a use that may not be treated as a business under state or federal law.

"Occupancy" means the use or possession, or the right to the use or possession, of any lodging unit for lodging or sleeping purposes.

"Operator" means the person who is the proprietor of the hotel or STLU (defined in this section), whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character other than that of an employee, the managing agent is also deemed an operator for the purposes of this chapter and has the same duties and liabilities as the principal. Compliance with the provisions of this chapter by either the principal or the managing agent is considered to be compliance by both.

"Owner" means a person that holds legal or equitable title to a lodging unit.

"Person" means an individual, firm, partnership, joint venture, association, social club, fraternal organization, joint-stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

"Rent" means the consideration charged, whether or not received, for the occupancy of space in a lodging unit, valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, and property and services of any kind, without any deduction therefrom.

"Renter" means a person, that rents or occupies a lodging unit and who is authorized to sleep and stay there overnight.

"Short term" means for a period of 29 or fewer consecutive calendar days. When applied to lodging, "short-term" refers to the duration of occupancy.

"Single housekeeping unit" means that the occupants of a dwelling unit have established ties and familiarity with each other, jointly use common areas, interact with each other, share meals, household activities, and expenses and responsibilities. Membership in the single housekeeping unit is fairly stable as opposed to transient; members have some control over who becomes a member of the household, and the residential activities of the household are conducted on a nonprofit basis. There is a rebuttable presumption that integral facilities and uses do not constitute single housekeeping units. Additional indicia that a household is not operating as a single housekeeping unit include but are not limited to: the occupants do not share a lease agreement or ownership of the property; members of the household have separate, private entrances from other members; members of the household have locks on their bedroom doors; members of the household have separate food-storage facilities, such as separate refrigerators.

"STLU" means short-term lodging unit other than a hotel, as those terms are defined by this section.

"Transient" means a person who exercises occupancy or is entitled to residential occupancy by reason of concession, permit, right of access, license, or other agreement for a period of 29 or fewer consecutive calendar days, counting portions of calendar days as full days. Any such person is deemed to be a transient until the 29-day period expires unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. For purposes of this chapter, the changing of rooms in a structure or property does not, by itself, cause a break in an otherwise consecutive period of occupancy. "Transient" does not apply to any of the following:

1. a person who by lease or other enforceable written agreement obtains an exclusive legal right to occupy a residential property or portion thereof for more than 29 consecutive calendar days,
2. a person who by lease or other enforceable written agreement obtains an exclusive legal right to occupy a residential property or portion thereof for an indeterminate period but who is required to give at least 30 days advanced notice of termination of his or her exclusive right of occupancy, or
3. a person who makes a non-reimbursable payment for the right to occupy any residential property for more than 29 days.

"Transient Occupancy Tax" means that tax levied by the City and collected by the operator under this chapter.

3.24.020 - Levy and collection of tax.

- A. For the privilege of occupancy in any hotel or STLU, each transient is subject to and must pay a tax in the amount of 10 percent of the rent charged by the operator.

Such tax constitutes a debt owed by the transient to the City, which is extinguished only by payment. The transient must pay the tax to the operator of the hotel or STLU when the rent is paid.

- B. If the room at the hotel or STLU is complementary, and is provided as consideration for a service provided to the hotel or the operator or for promotional or marketing purposes, the deemed rent is the higher of (i) the value of the services received or (ii) the average rent of all of the rooms in the hotel on the day that the room was provided. All unpaid tax is due when the transient ceases to occupy space in the hotel, regardless of whether the operator collects, or is able to collect, the full amount of the rent owed.
- C. If a room at the hotel or STLU is cancelled prior to occupancy, and the person canceling is charged the full room rate (e.g., the person is charged for occupancy even though the person might not occupy the room), the amount charged is the rent, and the operator shall collect the transient occupancy tax on that amount and pay it to the City.
- D. If the rent for use of an STLU is reduced or waived in consideration for a service provided to the STLU, its operator or owner, or for promotional or marketing purposes, then the deemed rent is the higher of (i) the value of the services received or (ii) the advertised rate of the STLU for the period of time that the STLU was so occupied. In addition, if the rent for use of an STLU is reduced or waived for any other reason, then the deemed rent is the advertised rate of the STLU for the period of time that it was so occupied unless the operator executes under penalty of perjury and submits to the Finance and Administrative Services Director a completed form that identifies the name, permanent address, telephone number, and contact information for each transient who occupied the STLU; the period or periods of time during which the transient so occupied the STLU; and a brief explanation of the reasons for the reduction or waiver of rent (e.g., discount to facilitate a rental in the ordinary course of business, rental to a family member, etc.). The forms for reduced or waived rents shall be available at the office of the City Finance and Administrative Services Director.
- E. Refusal or failure on the part of the transient to pay the transient occupancy tax due under this chapter does not relieve the transient of its obligation to pay such tax, and the transient remains liable to the City until all such tax has been paid.

3.24.030 - Exemptions from taxation.

- A. The following persons are exempt from paying the transient occupancy tax imposed by this chapter:
 - 1. Any person as to whom, or any occupancy as to which, it is beyond the power of the City to impose the tax;
 - 2. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;

3. The owner of the STLU while occupying the property.
- B. Exemptions may only be granted if the operator completes an exemption claim form under penalty of perjury when rent is collected. The exemption claim form shall be available at the office of the Finance and Administrative Services Director. After the Director reviews and verifies the documents offered in support of the exemption, the Director will determine whether or not the exemption is granted.

3.24.040 - Determination of tax by City on failure of operator to collect or remit tax.

If an operator fails or refuses to collect the tax imposed by this chapter or to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof, the Finance and Administrative Services Director may proceed in such manner as he or she deems best to obtain facts and information on which to base his or her estimate of the tax due, including, but not limited to, an audit of the operator's records. If an audit is deemed necessary by the Finance and Administrative Services Director, the operator is liable for such costs. When the Finance and Administrative Services Director procures such facts and information as he or she can with reasonable effort, the Director shall proceed to determine and assess against the operator the tax, interest, and penalties provided for by this chapter. If such determination is made, the Finance and Administrative Services Director shall give a notice of the amount so assessed in the manner described in section 3.24.050.

3.24.050 - Notice and hearing on violation.

- A. Nonadministrative-Fine Violations. The owner shares responsibility for compliance with this chapter. If there is reason to believe that an operator or owner has violated any of the provisions of this chapter or has been assessed estimated taxes described in section 3.24.040, the City shall provide written notice to the operator and (if not the operator) to the owner. Notice to the operator shall be sent to the operator's address and at the hotel or STLU, and notice to the owner shall be sent to the owner's residence or business address as those property addresses are listed in the City's business license or other records. The notices shall inform the operator and owner of the following:
1. the nature of the alleged violation;
 2. the penalties for such violation; and
 3. the owner's and operator's right to request a hearing on the alleged violation, which request shall be in writing and received by the City within 15 days after the date of the violation notice.
- B. If the operator or owner timely requests a hearing, the City Manager shall select a Hearing Officer to preside over the hearing. The City shall provide written notice to both the operator and owner of the date, time, and location of the hearing. The hearing notice shall further state that the owner and operator may present evidence, call witnesses, cross-examine the City's witnesses, and be represented

by an attorney at the hearing. The above notwithstanding, the City shall be permitted to present evidence in the form of affidavits in accordance with Government Code section 11514. At the conclusion of the hearing, or as soon thereafter as is practical, the Hearing Officer shall determine, in writing, whether there has been a violation of any ordinance, resolution, or law regulating the operation of the STLU. The written determination shall be provided to the operator at the operator's address and at the STLU address as listed in the City's business license or other records, and it shall be provided to the owner at the owner's residence or business address of record. The operator or owner may appeal the decision of the Hearing Officer to the City Council in the manner provided in section 3.24.060 of this chapter. If a hearing is not timely requested, the existence of the violation is conclusively presumed, and the City Manager or his or her designee shall send to the owner and operator written notice of the penalty imposed.

- C. **Administrative-Fine Violations.** The City shall follow the notice and hearing procedures established in Chapter 1.20 for any violation subject to the imposition of an administrative fine.

3.24.060 - Appeals.

An owner or operator aggrieved by any decision of the Hearing Officer under subsection 3.24.040(B) of this chapter may appeal to the City Council by filing a notice of appeal with the City Clerk within 15 days of service or mailing of the determination of tax due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator and owner at their last known places of address. The findings of the City Council are final and conclusive and shall be served upon the appellant in the manner prescribed in this chapter for service of notice of hearing. Any amount found to be due is immediately due and payable upon the service of notice.

3.24.070 - Report — Remittance of collections.

At the time the return is filed, the full amount of the transient occupancy tax collected during that month shall be remitted to the Finance and Administrative Services Director. All transient occupancy taxes collected by operators under this chapter shall be held in trust for the City by the operator until payment thereof is made to the Finance and Administrative Services Director. The reporting and remittance of collections must comply with the following:

- A. **Hotel.**
 - 1. **Monthly remittance.** Each operator shall, on or before the last day of each month, prepare and submit to the Finance and Administrative Services Director a return on forms provided by the Finance and Administrative Services Director, stating the total rents charged and received and the amount of transient occupancy tax collected the previous month. By way of example, on November 30th, each operator shall submit to the Finance and

Administrative Services Director their return for the period of October 1st through 31st.

2. Returns and payments are due immediately upon any succession of business.

B. STLU.

1. Quarterly remittance. Each operator must prepare and submit to the Finance and Administrative Services Director a return on forms provided by the Finance and Administrative Services Director stating the total rents charged and received and the amount of the transient occupancy tax collected the previous quarter. Taxes are due within 30 calendar days of the end of each quarterly period listed below:

Jan—March, due by April 30

April—June, due by July 31

July—September, due by October 31

Oct—December, due by January 31

2. Returns and payments are due immediately upon any succession of business.

Section 4. Changes to Chapter 3.24, Article III.

Chapter 3.24, Article III, of the code is amended to read as follows:

Article III. - Short-term Lodging Units

3.24.169 - Purpose and findings.

- A. The City Council hereby finds that inadequately regulated STLUs present a current threat to the public welfare.
 1. Large numbers of people renting short-term lodgings can severely escalate the demand for City services and create adverse impacts in residential neighborhoods; and
 2. The City and sheriff have received numerous complaints regarding excessive noise, parking, litter, disorderly conduct, and concerns regarding security and public safety at short-term lodgings; and
 3. The City desires to protect neighborhoods from adverse effects resulting from the operation of short-term lodgings and to ensure that the City collects the transient occupancy taxes; and

4. The proliferation of short-term lodgings impacts the residential character of several neighborhoods; and
 5. The commercialization of residential properties and the proliferation of short-term lodgings in particular drive up rents by reducing the stock of affordable housing; and
- B. The purpose of this chapter is to establish an STLU-permitting process and operational requirements to minimize potential adverse impacts of STLUs on neighborhoods to promote the health, safety, and welfare of renters, guests, and neighbors.

3.24.170 - Agency.

An owner may retain an agent to comply with the requirements of this chapter, including, without limitation, the filing of all reports and remittance of transient occupancy taxes, the filing of an application for an STLU permit, the management of the STLU, and the compliance with the conditions of the STLU permit. An STLU permit shall only be issued to the STLU owner. The owner is responsible for compliance with the provisions of this chapter; the failure of an agent, including an operator, to comply with this chapter is non-compliance by the owner.

3.24.180 - Permit required.

- A. A lodging unit shall not be rented for a short term without a valid STLU permit for that unit, issued in accordance with this chapter. Previously issued vacation rental property permits do not satisfy this requirement.
- B. No person or entity shall advertise or rent an STLU within the City of San Clemente without a valid STLU permit for that unit, issued in accordance with this chapter. For purposes of this section, advertising includes announcing or portraying in any medium, including electronic medium, that a residential property is available or can be made available for occupancy by a renter on a short-term basis.

3.24.190 - Application for an STLU permit.

The owner or owner's agent shall file an application for an STLU permit with the Finance and Administrative Services Director on forms provided by the City. The application shall contain the following information:

1. The name, address, telephone number, and email address of the STLU owner.
2. The name, address, telephone number, and email address of the operator for the STLU.
3. The street address and telephone number for the STLU itself.

4. The approximate square footage, the number of bedrooms in the STLU, and the maximum numbers of overnight renters in the STLU. The maximum number of overnight renters in the STLU shall not exceed two persons per legal bedroom plus two persons. In no event may it exceed the maximum allowed under Title 15 of the code.
5. Evidence of a valid business license issued by the City for the separate business of operating the STLU. A separate business license is required for each location.
6. A diagram or photograph of the property showing the number and location of designated, legal on-site parking spaces, and the maximum number of vehicles allowed for overnight renters in the STLU.
7. Such other information as the Finance and Administrative Services Director deems reasonably necessary to administer this chapter.

3.24.200 - Denial of STLU permit.

The Finance and Administrative Services Director shall issue an STLU permit if each of the following is true:

1. the owner has fully complied with sections 3.24.020 and 3.24.190,
2. the STLU property has not previously been the subject of an STLU permit that was revoked under section 3.24.230 within the previous 24 months, and
3. the STLU owner has not previously held an STLU permit that was later revoked under section 3.24.230.

3.24.210 - Filing fee.

An application for an STLU permit must be accompanied by payment of the required fee, the amount of which is established by resolution of the City Council.

3.24.220 - Conditions.

- A. STLU owners must comply with all STLU-permit conditions.
- B. All STLU permits issued under this chapter are subject to the following standard conditions:
 1. To ensure close supervision of STLUs by owners and to preserve the character of the neighborhoods, the STLU owner must be the permanent resident of the STLU that is to be rented short-term. This means that the owner must live in that specific residential unit for at least 275 nights of any given calendar year. If the owner is a new resident, the owner must have

occupied this specific unit for at least 60 consecutive days prior to applying for an STLU permit. If the owner owns a multi-unit building, the owner must live in one of the units year round. For purposes of this subsection 3.24.220(B)(1), STLU owner includes an individual with a controlling interest in a corporate entity if the entity holds legal title to the property, as well as an individual that is a named beneficiary if the property is held in trust.

2. The STLU owner shall, by written agreement with the renter, limit overnight occupancy of the STLU to the maximum number of renters. The number of renters is limited by the number approved in the STLU permit.
3. STLU renters and their guests shall not create unreasonable noise or disturbances, engage in disorderly conduct, or violate provisions of this code or any state or federal law or regulation, including, but not limited to, those pertaining to noise, disorderly conduct, the consumption of alcohol, or the use of illegal drugs. The STLU owner shall ensure compliance with this provision.
4. STLU renters and their guests shall only utilize the designated, legal on-site parking spaces; they shall not have more vehicles at the STLU property than the number of designated, legal parking spaces; and the STLU owner shall give notice to renters and contractually bind them to observe this requirement in a written rental agreement.
5. Upon notification that an STLU renter or a renter's guest has violated subsection 3.24.220(B)(2) or subsection 3.24.220(B)(3) above, the STLU owner shall promptly notify the renter of the violation and take such action as is necessary to prevent a recurrence. It is not intended that the owner act as a law-enforcement officer or place himself or herself in harm's way.
6. The STLU owner shall provide a 24-hour emergency contact that will respond, on-site if requested, within 30 minutes to complaints about the condition, operation, or conduct of STLU renters or their guests.
7. The STLU owner shall comply with all applicable codes regarding fire, building construction and safety, and all other relevant laws, regulations and ordinances.
8. The STLU owner shall post a copy of the permit and house rules that comply with the conditions set forth in this section in a conspicuous place in the STLU.
9. An STLU may only be used for overnight lodging. It shall not be used for a wedding, bachelor or bachelorette party, or other party, conference, or any other similar event.

10. Advertising
 - a. All advertising for an STLU shall include the City-issued STLU permit number and associated business-license number.
 - b. Owner shall notify City as to each and every publication, website, or other advertising forum where owner's STLU is advertised.
 - c. No on-site exterior signs may be posted advertising an STLU.
 - d. The City website will include a list of all currently-permitted STLUs. Owner shall ensure that the City has current and accurate information throughout the term of the permit. Owner shall inform the City of any change to information on the permit application within 10 business days of the change. A failure to timely report a change is a violation of the permit condition.
11. Each STLU owner shall, upon issuance of the STLU permit or any approved change to an existing STLU permit, provide written notice to the Finance and Administrative Services Director and to all neighboring property owners (within a radius of 300 feet of the STLU property) the following information:
 - a. The names of the STLU owner and of the STLU operator (if not the owner), including telephone numbers at which those parties may be reached on a 24-hour basis.
 - b. The City's Code Enforcement telephone number by which members of the public may report violations of this chapter.
 - c. The maximum number of renters that are permitted to stay in the unit.
 - d. The maximum number of vehicles that are allowed to be parked at the property.
12. An STLU permit is valid for 12 months from the date issued.
13. The STLU owner shall timely comply with section 3.24.070. Owner shall timely submit the filing whether or not the STLU was rented during the reporting period and transient occupancy tax was collected.
14. The Finance and Administrative Services Director may request access to an STLU or to records related to the use and occupancy of the unit for the purpose of inspection or audit to determine that the objectives and conditions of this chapter are being fulfilled. On such request, the STLU owner shall provide access to the Director during normal business hours.

3.24.230 – Violations; revocation of STLU permit

If an STLU owner or operator receives four citations of violation for a particular STLU within any 12-month period, a hearing will be held in accordance with sections 3.24.050 and 3.24.060. At the hearing, the hearing officer may revoke the permit or impose additional conditions on the STLU permit to mitigate the impact of the STLU on the community.

3.24.240 - Penalties for failure to remit tax when due.

- A. Original Delinquency. An operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of the ten percent (10%) of the amount of tax.
- B. Continued Delinquency. An operator who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent shall pay a second delinquency penalty of ten percent (10%) of the amount of tax in addition to the amount of the tax and the ten percent (10%) penalty first imposed.
- C. Fraud. If the Finance and Administrative Services Director determines the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 3.24.240(A) and (B) of this section.
- D. Interest. In addition to the penalties imposed, any owner or agency who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half percent a month on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section becomes a part of the tax required to be paid by this chapter.

3.24.250 - Procedure for imposition of penalties and revocation.

Penalties may be imposed, and permits may be revoked, only in the manner provided in Sections 3.24.050 and 3.24.060, above. All penalties, assessments, and taxes must be paid prior to filing a request for a hearing.

3.24.260 - Permits and fees not exclusive.

Permits and fees required by this chapter are in addition to any other license, permit, or fee required by another chapter of this code. The issuance of any permit pursuant to this chapter does not relieve the owner and operator of the obligation to comply with all other provisions of this code pertaining to the use and occupancy of the STLU or the property on which it is located.

3.24.270 - Penalty.

- A. Any person violating the provisions of this chapter by operating an STLU without a valid STLU permit is guilty of a misdemeanor.
- B. Any person advertising an STLU for which there is no valid STLU permit or associated business license is guilty of a misdemeanor.

3.24.280 - Amortization and amnesty period.

An STLU owner must apply for an STLU permit under this chapter within 60 days after the effective date of this ordinance. STLU owners who failed to obtain a transient occupancy registration certificate under this chapter prior to the effective date of this ordinance, may do so without penalty, notwithstanding other provisions of this chapter, if an application for the certificate is filed no later than 60 days after the effective date of the ordinance codified in this section.

3.24.290 - Recording notice of lien.

If any amount required to be remitted or paid to the City under this chapter is not remitted or paid when due, the Finance and Administrative Services Director may, within four (4) years after the amount is due, file for and record in the office of the county recorder a notice of lien specifying the amount of tax, penalties and interest due, the name and address as it appears on the records of the Finance and Administrative Services Director of the owner or agent liable for the same and the fact that the Finance and Administrative Services Director has complied with all provisions of the chapter in the determination of the amount required to be remitted and paid. From the time of the filing, the amount required to be remitted, together with penalties and interest, constitutes a lien upon all real property in the county owned by the owner and/or agent or afterwards and before the lien expires acquired by him. The lien has the force, effect and priority of a judgment lien and shall continue for ten (10) years from the time of filing of the notice of lien unless sooner released or otherwise discharged.

Section 5. Change to chapter 5.04.

A new section 5.04.340 is added to read as follows:

5.04.340 - Roommate Rentals.

- A. A "roommate rental" is exempt from the business-license requirements of this title. "Roommate rental" means a home where all of the following occur:
 - 1. The owner occupies the property.
 - 2. Three or fewer rooms are rented to three or fewer persons.
 - 3. Rentals are on a 30-day or longer basis.

4. Rentals are under one or more oral or written contracts.

Section 6. Business-license fee for one- and two-unit lodgings

Subsection 5.08.040(A) is amended to add the following sentence immediately following "Apartments, hotels, motels, rooming houses, auto courts, rooms, bungalow courts, buildings having rental spaces:" —

1 or 2 units or spaces Amount set by City Council resolution.

Section 7. New section 8.48.040(J).

Subsection (J) is added to section 8.48.040 of Chapter 8.48 regarding General Noise Regulations to read as follows:

- J. Whether the noise can be heard from a distance of 20 feet or more from the noise source, or from a distance determined to be reasonable by the Officer (as defined in section 9.16.010(G) of the code).

Section 8. Clarifying meaning of "Peace Officer."

All references to "Peace Officer" in Chapter 9.16 of the code regarding Loud and Unruly Gatherings are replaced with "Officer."

Section 9. Changes to chapter 9.16.010.

Subsection (A) of section 9.16.010 is changed to read as follows:

"Loud or Unruly Gathering" means a gathering of two or more persons on or at any residential unit for a social occasion or other activity at which loud or unruly conduct occurs and results in a public nuisance or a threat to the public health, safety, general welfare, or quiet enjoyment of residential property or nearby public property.

1. As used in this chapter, "loud or unruly" conduct includes, without limitation, any or all of the following:
 - a. Noise in excess of that permitted by the city's noise ordinance and/or general plan;
 - b. Obstruction of public and private streets by crowds or vehicles;
 - c. Obstruction of rights-of-way by people or vehicles;
 - d. The service of alcohol to minors;
 - e. Possession and/or consumption of alcohol by minors;

- f. Assaults, batteries, fights, domestic violence or other disturbances of the peace;
 - g. Vandalism;
 - h. Litter;
 - j. Urinating or defecating in public; or
 - k. Public drunkenness.
2. Loud or unruly conduct does not include any activity that is:
- a. Protected by Article 1, Section 4 of the California Constitution;
 - b. Protected by the First or Fourteenth Amendments to the United States Constitution; or
 - c. Regulated by the California Alcoholic Beverage Control Act.

A new subsection (G) is added to section 9.16.010 of the code to read as follows:

- G. "Officer" means an officer as defined by Government Code section 50920 or a City officer or employee as identified in section 1.12.010(A) of the code.

Section 10. New chapter 9.20.

A new chapter is added to the code to read as follows:

Chapter 9.20 - REPEAT NUISANCE SERVICE-CALL FEE.

9.20.010 Purpose.

- A. The purpose of this section is to protect the public health, safety, general welfare, and quiet enjoyment of residential property by preventing and abating repeat service-response calls by the City to the same property or location for nuisance, which divert police and other public-safety services from other city residents. It is the intent of the City to impose and collect service-call fees from the owner or occupant, or both, of property to which peace officers or city officers or employees must repeatedly respond to address a nuisance. The repeat nuisance service-call fee imposed by this chapter is intended to cover the excess cost above the cost of providing normal law- or code-enforcement services and police protection citywide.
- B. The City may enforce this chapter in addition to any other remedy that it has under the code. Nothing in this chapter precludes concurrent or subsequent enforcement of any other provision of this code, including, but not limited to those of Titles 5

(business licenses and regulations), 8 (health and safety), and 9 (public peace, morals and welfare).

9.20.020 Scope and application.

This section applies to all owners and occupants of private property that is the subject or location of the repeat nuisance service-call by the city. This section applies to any repeat nuisance service call made by an Officer, as that term is defined in section 9.16.010(G).

9.20.030 Definition of nuisance service-call.

- A. "Nuisance service-call" means any visit by an Officer to private property that results in a written warning or citation to the property owner or occupant for a nuisance under the code.
- B. The written warnings or citations shall:
 - 1. State the specific nuisance at the property and the date of occurrence;
 - 2. State that, in addition to the city's right to seek other legal remedies or actions for abatement of the nuisance, the owner and occupant may be subject to a repeat nuisance service-call fee if a third nuisance service-call is made to the property within 365 days of the date of the notice; and
 - 3. Be served personally on the owner and occupant at the time of the visit or, within five days of the visit, by U.S. mail to the address of the subject property and, if different, to the owner's address of record on the county property-tax rolls.

9.20.040 Repeat nuisance service-call fee.

- A. The City shall impose a repeat nuisance service-call fee on both the owner and the occupant of private property if the City has made two or more nuisance service-calls to the property during the preceding 365 days. This fee is in addition to any other fee lawfully imposed under this code or state or federal law.
- B. The amount of the repeat nuisance service-call fee shall be set forth by City Council resolution. All repeat nuisance service-call fees imposed and charged against the owner and occupant under this section are deemed delinquent 30 days after the City mails a billing statement to the address of the subject property and, if different, to the owner's address of record on the county property-tax rolls. Delinquent payments are subject to late penalty equal to ten percent the amount due.

9.20.050 Right to appeal repeat nuisance service-call fee.

In the billing statement for an imposed repeat nuisance service-call fee, the City shall inform the owner and occupant of his or her right to a hearing on the alleged repeat nuisance service-calls. The owner or occupant may request a hearing by serving a written

request for hearing on the City Clerk within seven calendar days after the statement was mailed. The hearing shall be conducted in accordance with section 1.20.080 (Administrative hearing).

9.20.060. Legal remedies not exclusive.

Nothing in this section shall be construed to limit the City's other available legal remedies for any violation of the law that may constitute a nuisance service-call.

Section 11. All existing provisions of the code that are repeated herein are repeated only to aid decisionmakers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

Section 12. Severability. If any part of this ordinance is for any reason determined to be invalid or unconstitutional by any court of competent jurisdiction, it has no effect on the validity of the rest of the ordinance. The City Council hereby declares that it would have adopted this ordinance and each part of it irrespective of the fact that any part of is declared invalid or unconstitutional.

[Signatures on following page]

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2016.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

APPROVED AS TO FORM:

City Attorney