



**AGENDA REPORT**  
SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: May 1, 2018

Agenda Item 9-C  
Approvals:  
City Manager [Signature]  
Dept. Head [Signature]  
Attorney MR  
Finance \_\_\_\_\_

**Department:** City Manager  
**Prepared By:** City Attorney

**Subject:** CONSIDERATION AND ADOPTION OF AN ORDINANCE AMENDING MUNICIPAL CODE CHAPTERS 1.20 (ADMINISTRATIVE FINES), 3.24 (TRANSIENT OCCUPANCY TAX), AND A CROSS-REFERENCE TO CHAPTER 8.28 IN SUBSECTION 17.28.292(E)(3) (SOLID WASTE COLLECTION) REGARDING REGULATION OF SHORT-TERM LODGING UNITS

**Fiscal Impact:** No fiscal impact.

**Summary:** The City's short-term lodging ordinance has been in effect since May 2016. During that time, the City has had occasion to review and apply some terms of the ordinance, but has learned through implementation that some provisions would benefit from clarification or amplification with these proposed amendments. Some of these terms were also discussed in mediation relating to a lawsuit challenging the ordinance and, if adopted, will also serve as a platform to settle that lawsuit.

**Background:** In May 2016 the City Council adopted Ordinances 1622, 1623, and 1624 regulating short-term lodgings (the "STLU ordinances"). The STLU ordinances provided a comprehensive set of operational and zoning regulations for STLUs. In developing those regulations, the City relied in large part on ordinances from other jurisdictions and from a large amount of testimony and input from short-term rental owners, neighbors, and City staff. After using this regulatory platform for several months, staff has gained experience and input through reviewing and approving STLU license applications, collecting transient-occupancy tax, bringing enforcement actions against illegal STLUs, and interacting with other co-regulatory and enforcement agencies such as the California Coastal Commission and the Orange County Sheriff. As discussed below, this process has led to the development of some amendments to the Municipal Code that will clarify the STLU ordinance and assist the City in enforcing it with greater predictability and effectiveness.

**Discussion:** The proposed amendment will do the following:

1. Clarify the interrelationship between STLU citations and traditional building code notices of violation. One reading of the STLU ordinance's mandate that violations be immediately corrected appeared to contradict the Code's correction notices for building code violations. This amendment affirms that property owners will be granted a reasonable time (typically 15 days) to correct non-hazardous code violations requiring physical construction. By contrast, there is no correction period for temporary violations that can reasonably be cured immediately. (Draft Ord., Sec. 3.)

2. Further clarify the existing meaning of "hotel" by:
  - a. making clear that a portion of a structure may constitute a "hotel," even if the entire structure is not devoted to short-term lodging;
  - b. removing an unnecessary reference to "six or more lodging units" (the six-unit distinction is already adequately addressed in the definition of STLU);
  - c. replacing the reference to "occupancy for short-term, temporary, or impermanent lodging or sleeping purposes" with "occupancy by transients for lodging or sleeping purposes;" the Code defines "transient" and the "transient" definition more precisely addresses the short-term nature of the regulated use;
  - d. better indicating that the existing list of uses that might constitute a "hotel" for TOT purposes is only exemplary and is not exhaustive;
  - e. adding "boarding house" and "accessory dwelling unit" to the list of "hotel" examples, to keep pace with terms in recently enacted state and local laws and modern parlance for these uses; and
  - f. making it even more obvious that, for transient occupancy tax ("TOT") purposes, an STLU is a subtype of "hotel." (Sec. 4.)
3. Align the appeal period and procedures for TOT decisions that affect an STLU operating license with the appeal period and procedures that govern zoning decisions generally. Because the STLU-related TOT and zoning approvals are interdependent and therefore can both be at issue in the same proceedings, the deadlines and notices will be 10 days for both (STLU appeals were set at 15 days). (Sec. 5, 6, and 7.)
4. Clarify that the standard of review for an administrative appeal of a TOT decision is de novo (i.e., the application is considered afresh by the reviewing body and the lower decision is not binding. (Sec. 6.)
5. Clarify that the scope of what counts as one of "three strikes" toward revocation of an STLU operating license is a conclusive, final determination of a violation (i.e., not a violation from which an appeal is still pending or that was reversed on appeal). A mere courtesy warning, notice of violation, or notice of delinquency is not a "strike." This will allow ensure that the Code does not provide a disincentive to the correction of minor, easily correctable TOT delinquencies (Sec. 7.)
6. Clarify the meaning of the cross-reference to the City's solid-waste-management ordinance. Subsection 17.28.292(E)(3) will be revised to state more clearly that all trash must be in containers and (by cross-reference to

Chapter 8.28) that a uniform grace period (the evening before and 24 hours after) applies to trash containers out for collection. (Sec. 8.)

All of the proposed changes are described in detail in the draft ordinance, which is included as Attachment 1 with this report, and highlighted in context in the *Code Redline* document that is included as Attachment 2.

**Recommended**

**Action:** Staff recommends that the City Council introduce Ordinance No. \_\_\_\_ entitled AN ORDINANCE AMENDING MUNICIPAL CODE CHAPTERS 1.20 (ADMINISTRATIVE FINES), 3.24 (TRANSIENT OCCUPANCY TAX), AND A CROSS-REFERENCE TO CHAPTER 8.28 IN SUBSECTION 17.28.292(E)(3) (SOLID WASTE MANAGEMENT) REGARDING REGULATION OF SHORT-TERM LODGING UNITS.

- Attachments:**
1. Draft ordinance entitled "ORDINANCE AMENDING MUNICIPAL CODE CHAPTERS 1.20 (ADMINISTRATIVE FINES), 3.24 (TRANSIENT OCCUPANCY TAX), AND A CROSS-REFERENCE TO CHAPTER 8.28 IN SUBSECTION 17.28.292(E)(3) (SOLID WASTE MANAGEMENT) REGARDING REGULATION OF SHORT-TERM LODGING UNITS"
  2. *Code Redline* document highlighting the proposed changes to the municipal code in context.

**Notification:** Notice was given in accordance with state law and the San Clemente Municipal Code.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MUNICIPAL CODE CHAPTERS 1.20 (ADMINISTRATIVE FINES), 3.24 (TRANSIENT OCCUPANCY TAX), AND A CROSS-REFERENCE TO CHAPTER 8.28 IN SUBSECTION 17.28.292(E)(3) (SOLID WASTE MANAGEMENT) REGARDING REGULATION OF SHORT-TERM LODGING UNITS**

**WHEREAS**, in May 2016 the City Council adopted Ordinances 1622, 1623, and 1624 regulating short-term lodgings (the "STLU ordinances"); and

**WHEREAS**, the STLU ordinances provide a comprehensive set of operational and zoning regulations for STLUs; and

**WHEREAS**, in developing those regulations, the City relied in large part on ordinances from other jurisdictions and from a large amount of testimony and input from short-term rental owners, neighbors, and City staff; and

**WHEREAS**, after using this regulatory platform for several months, the City has gained experience and input through reviewing and approving STLU license and permit applications, collecting transient-occupancy tax, bringing enforcement actions against illegal STLUs, and interacting with other co-regulatory and enforcement agencies; and

**WHEREAS**, this process has led to the development of amendments codified herein that will clarify the STLU ordinances and assist the City in enforcing it with greater predictability and effectiveness; and

**WHEREAS**, these amendments do not add any new restriction on tourist-serving short-term lodgings in the Coastal Zone, create any impediment to access to water, change the density or intensity of use of land; or cause any division of land, so these amendments do not result in "development" under the California Coastal Act; and

**WHEREAS**, the City Council has reviewed and considered the agenda reports prepared in connection this ordinance, including the policy considerations discussed therein, and the written and oral testimony received in the pertinent hearings; and

**WHEREAS**, in accordance with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA") and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), the City has determined that the revisions to the San Clemente Municipal Code are exempt from environmental review pursuant to State CEQA Guidelines sections 15301 and 15061(b)(3) because the revisions relate to the operation, permitting, leasing, and licensing of existing structures, involve no expansion of use or capacity, and because it can be seen with certainty that the revisions will not result in a potentially significant physical impact on the environment.

**NOW, THEREFORE**, the City Council of the City of San Clemente does ordain as follows:

**Section 1:** The recitals above are each incorporated by reference and adopted as findings by the City Council.

**Section 2:** The City Council hereby finds and determines that the proposed revisions to the San Clemente Municipal Code are categorically exempt from CEQA under State CEQA Guidelines section 15301, which exempts the operation, permitting, leasing, and licensing of existing structures. Here, the revisions primarily affect the administration of STLUs, in regards to parking, occupancy, amortization of non-conforming use, and management. The revisions do not increase use or capacity of existing structures above what is already permitted by way of existing building codes and land use regulations. No change of use is proposed or allowed. Further, none of the exceptions to use of a categorical exemption identified in State CEQA Guidelines section 15300.2 are present. Specifically, the proposed revisions do not result in damage to scenic resources, do not affect parcels identified as hazardous waste sites or facilities, will not impact historic resources, will not result in significant cumulative impacts, and will not impact uniquely sensitive environments. Finally, no unusual circumstances are present that would bar use of a categorical exemption. The City Council further finds and declares that the proposed revisions to the San Clemente Municipal Code have no potential to result in a significant impact on the environment, due to the revisions' administrative nature, and therefore the revisions are exempt from further environmental review under State CEQA Guidelines section 15061(b)(3). Each of the foregoing exemptions alone exempts the whole of the action.

**Section 3:** SCMC section 1.20.050 Correction Conditions is amended to read in its entirety as follows:

1.20.050 - Correction Conditions.

- A. Applicability of this section. This section 1.20.050 applies exclusively to building code violations that do not create an immediate danger to health or safety and that cannot reasonably be cured immediately (hereinafter "correction condition").
- B. Correction Period. An offender shall have at least fifteen (15) calendar days to correct or otherwise remedy a correction condition prior to the issuance of an administrative citation and the imposition of the corresponding fine. A longer correction period may be granted if the Enforcement Official determines that additional time is reasonably necessary to remedy the correction condition.
- C. Correction Notice. Upon discovery of a correction condition, the Enforcement Official shall issue a written correction notice to the offender by personal service or by registered or certified mail to the offender's last known address. Such notice shall refer to each code section violated and

facts supporting the issuance of the citation. The correction notice shall also describe the action or actions necessary to correct the violation and state the final date by which the correction must be completed, which shall not be less than fifteen (15) calendar days from the date that the correction notice is issued (the "Correction Period"). In addition, the correction notice shall include a warning that failure to correct the violation by the end of the Correction Period may result in the imposition of an administrative fine and shall state the amount of the administrative fine applicable to the violation.

- D. Procedure Upon Expiration of Correction Period. If the offender remedies the correction condition before the end of the Correction Period, the Enforcement Official shall issue the offender a notice of compliance. If the offender does not remedy the correction condition before the end of the Correction Period, the Enforcement Official may issue the offender an administrative citation in accordance with section 1.20.040.

**Section 4:** The definition of "hotel" in SCMC section 3.24.010 Definitions, is amended to read in its entirety as follows:

"Hotel" means any structure, or any portion of any structure, that is occupied or intended or designed for occupancy by transients for lodging or sleeping purposes. By way of example, "hotel" here includes, among other things, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, vacation rental, boarding house, rooming house, apartment house, dormitory, public or private club, bed-and-breakfast, private single-family residence, private multi-family residence, condominium, townhouse, guest house, accessory dwelling unit, mobile home or house trailer at a fixed location, or other similar structure or portion thereof, that is described by the first sentence of this paragraph. Any reference in this chapter to "hotel" includes "STLU" (defined in this section), unless otherwise indicated.

**Section 5:** SCMC section 3.24.050 Notice and Hearing on Violation, subsection (A)(3), is amended to read in its entirety as follows:

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 ten (10) days after the date of the violation notice.

**Section 6:** SCMC section 3.24.060 Appeals, is amended to read in its entirety as follows:

An owner or operator aggrieved by any decision of the Hearing Officer under subsection 3.24.050(B) or Section 3.24.067 of this chapter may appeal to the City Council by filing a notice of appeal with the City Clerk within 10 days of

service or mailing of the Hearing Officer's decision. 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 appeal hearing shall be a de novo review, governed by section 17.12.140, subsection (E) of this code. The findings of the City Council are final and conclusive and shall be served on 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.

**Section 7:** SCMC section 3.24.067 is amended to read in its entirety as follows:

**3.24.067 – Violations; Revocation of Operating License or STLU Zoning Permit.**

- A. If an STLU owner or operator is conclusively found to have committed either (1) three violations of this code, including any violation of the STLU zoning permit conditions, for a particular STLU within any 12-month period, or (2) a single violation of this code that results in a serious threat to the public health, safety, or welfare, then 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 STLU operating license or impose additional conditions on the STLU operating license to mitigate the impact of the STLU on the community. For purposes of this subsection 3.24.067(A), "conclusively found to have committed" a violation means to be issued a citation that the owner or operator fails to appeal or, if the operator or operator appeals a citation, a final City determination that is adverse to the owner or operator.
- B. If the STLU is also the subject of an STLU zoning permit modification or revocation under section 17.16.145, subsection (H), then the operating-license matter shall be consolidated with the zoning-permit matter and they shall be heard together under the procedures governing the latter (i.e., under Sections 17.16.145 and 17.12.175 of this code).

**Section 8:** SCMC section 17.28.292 Minimum Development Standards for STLUs, subsection (E)(3), is amended as follows:

The final sentence of the paragraph is amended to read in its entirety as follows:

"All trash containers shall be placed for the purpose of collection by the City's authorized waste hauler on the subject site's scheduled trash-collection day in compliance with the requirements specified in Chapter 8.28, Collection and Disposal of Solid Waste."

**Section 9:** All existing provisions of the Municipal Code that are repeated herein are repeated only to aid decision-makers and the public in understanding the

effect of the proposed changes and to assist in clearer organization and codification. Restatement of existing provisions does not constitute a new enactment.

**Section 10:** If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

**Section 11:** The City Council hereby directs staff to prepare, execute, and file with the Orange County Clerk, a Notice of Exemption within five (5) working days of the approval of this Ordinance.

**Section 12:** The City Clerk shall certify to the adoption of this ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code section 36933.

**Section 13:** The documents and materials associated with this ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at San Clemente City Hall, 100 Avenida Presidio, San Clemente, CA 92672.

**Section 14:** The City Clerk shall certify the adoption of this ordinance and cause it, or a summary of it, to be published as required by law.

APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

\_\_\_\_\_  
Mayor of the City of San  
Clemente, California

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney  
City of San Clemente, California



STATE OF CALIFORNIA        )  
COUNTY OF ORANGE        ) ss.  
CITY OF SAN CLEMENTE     )

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. \_\_\_\_\_ having been regularly introduced at the meeting of \_\_\_\_\_, was again introduced, the reading in full thereof unanimately waived, and duly passed and adopted at a regular meeting of the City Council held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

