



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: May 1, 2018

Agenda Item 7-C

**Approvals:**

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

**Department:** Community Development Department, Planning Division  
**Prepared By:** Carl Stiehl, Senior Planner

**Subject:** *AMENDMENT TO SAN CLEMENTE MUNICIPAL CODE TITLE 17 REGARDING REGULATION OF SHORT-TERM LODGING UNITS; STLU ZONING AMENDMENT 17-392*

**Fiscal Impact:** The amendment will have no fiscal impact on the City, except to the extent that it may increase the projected inventory of short-term rental units and the associated transient occupancy tax derived from them.

**Summary:** The City's short-term lodging unit (STLU) ordinance has been in effect since May 2016. Since then, the City has reviewed and applied the ordinance and determined that some of its provisions warrant clarification and amplification. To correct these provisions, on November 21, 2017 the City Council initiated a Zoning Amendment regarding the regulation of STLUs. Some of the potential provisions were challenged in litigation, which would be resolved through the Zoning Amendment in this item.

**Background:** On May 17, 2016 the City Council adopted Ordinances 1622, 1623 and 1624 regulating short-term lodging units (the STLU ordinances). The ordinances provided a comprehensive set of operating and zoning regulations for STLUs. In developing those regulations, the City relied on ordinances from other jurisdictions and input from short-term rental owners, STLU neighbors, the general public and City staff. After using this regulatory platform, the City has gained experience about the interrelationship of STLU operating regulations and zoning laws and has had the opportunity to initiate and prosecute enforcement actions relating to STLUs.

During that same time, the San Clemente Vacation Rental Alliance (the "Alliance") challenged certain aspects of the STLU ordinances. Among other arguments, the Alliance lawsuit contends that the STLU ordinances constituted a "development project" under the California Coastal Act and that as a development project the ordinances required a Coastal Development Permit. The City disagreed with this position. City representatives and representatives of the Alliance met in court-ordered mediated settlement conferences. A central issue in these sessions was the rationale for the ordinances' disparate treatment of STLUs (as compared to traditional housing with the same number of occupants) on Buena Vista in North Beach and on Avenida Montalvo.

The Alliance's view was that these areas were historically oriented toward short-term vacation rentals and would almost certainly be required for inclusion in the STLU overlay if Coastal Commission approval for the ordinances had been sought. In the meantime, the City has actively engaged with the Coastal Commission in discussing

these issues in connection with its certification of the City's Local Coastal Plan. The Commission's approval of the LCP Land Use Plan ("LUP") contemplated the provision and regulation of STLUs subject to the City's Implementation Plan, which is still pending.

The City and the Alliance have reached a negotiated settlement of the active litigation. Further, the Coastal Commission's deliberations and action on the LUP have given the City insights into how the Commission will view STLU regulations. The settlement requires consideration and passage of certain changes in the STLU ordinances, which staff is recommending for the reasons discussed below. These amendments will allow the STLU ordinances to remain on the books and will require dismissal of the challenge to them.

On November 21, 2017 with initiation of this Zoning Amendment, the City Council directed that several modifications be made in the draft ordinance presented to the Council and that special consideration be given to some issues described below, which also resulted in re-writes to the draft ordinance. The Alliance has consented to those Council-initiated changes made to the November 21, 2017 draft. For the November 21, 2017 City Council Report, see Attachment 5.

**Discussion:** The settlement agreement requires adoption of amendments to the City's Zoning Ordinance. The proposed zoning amendment will do the following:

1. Eliminate an STLU-specific parking standard, leaving STLUs subject to the same parking regulations that govern residential uses in the same area. (Draft Ord., SEC. 7 and 8.)
2. Allow a STAR owner to satisfy the occupancy requirement by having a "trained and qualified property manager" reside at the STAR, with standards for manager training and qualifications to be determined by City resolution. (SEC. 10.)
3. Designate STLU-permitted areas by reference to a map of "Short-Term Lodging Units (STLU) Allowed Areas," instead of to a parcel description in the code. (SEC. 11.)
4. Expand the STLU Allowed Areas to include some additional lots on Avenida Montalvo and on Buena Vista. (SEC. 13.) The "Short-Term Lodging Units (STLU) Allowed Areas" map will be included in the Zoning Code in a new Appendix C. A copy of the map is included as Exhibit A to the draft ordinance. The ordinance is included as Attachment 1 to this report. A similar map that highlights the new STLU-allowed areas is included as Attachment 3 to this report.
5. Allow for an extended amortization period for non-conforming STLUs if the STLU owner applies for an extension, is in good standing, and meets certain requirements. "In good-standing" means "current on remittance of STLU TOT to the City and with no violation of the City's municipal code, including the TOT ordinance, that was not cured within 30 days of the notice of violation." (SEC. 12.) This avoids denial of the extended amortization due to minor lapses that are quickly and easily cured.

On November 21, 2017 the City Council made the following requests and instructions for the Planning Commission's consideration and on April 18, 2018 the Planning Commission reviewed the requests along with the draft amendment. The Zoning Amendment or accompanying enactments are explained in the following italicized text:

1. There are to be no proposed or discussed changes to Ordinances Nos. 1622 and 1623 in relation to the Residential Low zone.

*The proposed Zoning Amendment has been modified to exclude changes to the Residential Low zone.*

2. STLU On-Street Parking. A parking permit process is to be initiated in all STLU zones.

*The staff work program on the Implementation Plan will include exploration of appropriate on-street permit parking areas.*

3. STAR property manager. A 300' distance requirement between short-term apartment rentals (STARS) is to be incorporated and maintained.

*This provision is incorporated into the amended ordinance.*

4. Modifications to the STLU overlay. No areas outside the areas indicated on the map identified in Attachment 2 to the [previous] Administrative Report are to be considered for STLUs, but a reduction in areas may be considered. No increase to the maximum 20% density limit shall be considered. Consideration is to be given as to whether Buena Vista should be included in the STLU zoning boundaries in light of the parking situation.

*The proposed STLU area maps contain this designation. The proposed Zoning Amendment has been modified to clarify how the 20% cap is calculated and that it is calculated and capped within each specific STLU area.*

5. Allowances for extended amortization. A maximum total amortization of 10 years shall be permitted for STLUs with clean records that are located in the medium and high density zones. City legal staff is to address non-utilized STLU permits as they relate to "use it or lose it".

*The proposed ordinance has been modified to include this maximum. The ordinance retains the "safety valve" provision to allow case-by-case review of the application of the default amortization based on stranded capital and other Constitutional constraints. A priority permitting system to track unutilized STLU permits and to manage the application queue for each STLU area has been established.*

The amendment will also clarify application of the permitting requirements and conform internal cross-references within Title 17. All of the proposed changes are described in the draft ordinance (included as Attachment 1) and highlighted in context in the Code Redline document that is included as Attachment 2. For additional information related to the proposed amendment's conformance with the General Plan,

please refer to the Planning Commission Report dated April 18, 2018 included as Attachment 4.

At the second reading of the Zoning Amendment, two resolutions will also be presented for the City Council's consideration. The resolutions will contain standards and criteria for the City Council's consideration that help with implementation of Sections 8 and 10 of the Zoning Amendment ordinance, and the Zoning Amendment allows the standards and criteria to be amended by resolution in the future to allow for flexibility in implementing these sections.

To ensure that there is no ambiguous overlap or gap in regulation, the Zoning Amendment takes effect either (a) 30 days after adoption or (b) on June 17, 2018, whichever is later.

### **CALIFORNIA COASTAL COMMISSION REVIEW**

This amendment does 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, and therefore, do not result in "development" under the California Coastal Act. Nevertheless, the City has agreed through certification of its LUP to pursue implementation of this ordinance through the Coastal Commission's review of the City's Implementation Plan.

### **PLANNING COMMISSION**

At the April 18, 2018 Planning Commission Meeting, the Planning Commission voted (4-1-1, with Talley absent and Ruehlin recused) to concur with staff and recommend approval of the proposed amendment to the City Council to amend the Zoning Ordinance regarding regulation of Short-term Lodging Units. The Planning Commission recommended that in addition to considering the amendments, that the City Council provide direction to staff regarding the parking situation in the new expanded areas and potential parking solutions that could be considered in the future.

### ***Environmental Review:***

The proposed ordinance has been reviewed 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.). Staff recommends that the City Council find the proposed revisions to the San Clemente Municipal Code categorically exempt from CEQA under State CEQA Guidelines section 15301. State CEQA Guidelines section 15301 exempts the operation, permitting, leasing, and licensing of existing structures where the action would lead to negligible or no expansion of use. 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. The revisions maintain the status quo for permitting, licensing and regulation of certain STLUs and STARs within the City.

Staff has reviewed the exceptions to use of a categorical exemption identified in State CEQA Guidelines section 15300.2 and has concluded none of those circumstances 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.

Separate and independent from the Class 1 exemption discussed above, staff has evaluated the proposed ordinance under the common-sense exemption. Staff recommends that the City Council find 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.

**Recommended**

**Action:**

STAFF RECOMMENDS THAT THE CITY COUNCIL ADOPT ZONING AMENDMENT 17-392 TO AMEND SAN CLEMENTE MUNICIPAL CODE TITLE 17, THE ZONING ORDINANCE RELATED TO SHORT-TERM LODGING UNITS.

**Attachments:**

1. Zoning Amendment 17-392 Ordinance entitled "An Ordinance of the City Council of the City of San Clemente Approving an Amendment to Municipal Code Title 17 Regarding Regulation of Short-term Lodging Units"  
  
Exhibit A: "Short-term Lodging Units (STLU) Allowed Areas" map
2. Code Redline document showing proposed change to Title 17
3. Maps highlighting new STLU allowed areas
4. Planning Commission Staff Report April 18, 2018
5. City Council Staff Report November 21, 2017

**Notification:** N/A

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
SAN CLEMENTE APPROVING AN AMENDMENT TO  
MUNICIPAL CODE TITLE 17 REGARDING REGULATION  
OF SHORT-TERM LODGING UNITS**

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

**WHEREAS**, the STLU ordinances were adopted with the intent of protecting the public's health, safety, and welfare by ensuring neighborhood compatibility through the regulation of commercial, non-residential uses located in residential zones; and

**WHEREAS**, based on (among other things) the Planning Commission's recommendation, the City Council adopted the STLU ordinances after making findings related to the health, safety, and welfare issues as noted above; and

**WHEREAS**, when the City Council adopted the STLU ordinances, staff was directed to evaluate the implementation of the STLU ordinances and to report back to the Council after 18 months on whether and how the STLU ordinances might be improved; and

**WHEREAS**, having implemented the STLU ordinances for a period of time and receiving feedback from residents, visitors, and STLU owners, the City recognizes that the STLU ordinances will better protect the public health, safety, and welfare, and be most compatible with the General Plan if they undergo some revisions; and

**WHEREAS**, a portion of the City's jurisdiction lies within the Coastal Zone; and

**WHEREAS**, section 30213 of the California Coastal Act (Pub. Res. Code §§ 30000-30900) states in relevant part, "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred"; and

**WHEREAS**, the California Coastal Commission has a policy of requiring local agencies to allow visitor-serving lodgings, such as short-term rentals (STLUs and STARs under the STLU ordinances), in the Coastal Zone; and

**WHEREAS**, City's Coastal Land Use Plan, or "LUP," which was recently certified by the Coastal Commission states that "[i]n addition to hotels and motels, the City's Coastal Zone offers timeshare units for owners and the general public and other short-term vacation rentals in the form of both Short-Term Apartment Rentals (STARs) and Short-Term Lodging Units (STLUs) and 160 camp sites in the Coastal Zone"; and

**WHEREAS**, Policy LU-49 of the LUP states, "The City shall allow the short term renting (29 days or less) of dwelling units, administratively permitted as Short Term Lodging Units (STLU) or conditionally permitted as Short Term Apartment Rentals

(STAR), in residential and mixed use zones, subject to appropriate regulations minimizing adverse impacts to neighborhoods or coastal resources. STLUs and STARs shall conform to the requirements of the underlying land use designation, and all standards and laws established by the City"; and

**WHEREAS**, the Coastal Act requires the City to implement its LUP through an implementation plan; and

**WHEREAS**, some of the City's zoning code is part of the City's coastal implementation plan; and

**WHEREAS**, in light of the Coastal Commission's policy toward visitor-serving lodgings, as well as the historical and existing uses of properties in some parts of the Coastal Zone, the City desires to designate more areas in the Coastal Zone than are currently identified in the STLU ordinances as areas where STLUs are allowed; and

**WHEREAS**, the City has identified additional properties in the Coastal Zone that are appropriate for STLUs due to their location in the Coastal Zone and the historically compatible uses that have been made of these and surrounding properties; and

**WHEREAS**, in addition, in the course of interpreting and enforcing the STLU ordinances, staff identified certain provisions that were not clear from the plain language of the ordinances and need clarification; and

**WHEREAS**, the City desires to clarify the interpretation and application of the STLU ordinances; 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 findings that the City made in support of adopting the STLU ordinances support these amendments and are incorporated here by this reference; and

**WHEREAS**, the City Council has considered a wide range of factors in determining what the appropriate amortization period is for nonconforming transitory-lodging uses, including, but not limited to, the following: the typical investment made by an owner, the nature of the nonconforming use, the nature of the neighborhood, the projected cost of relocation, the extent to which properties might be depreciated for tax purposes, whether an transitory-lodging business's good will might be hurt by moving to a new location, the length of a typical lease, and whether another location is available; and

**WHEREAS**, the City Council has reviewed and considered the Planning Commission's recommendation, as well as the agenda reports prepared in connection with the STLU ordinances, the Planning Commission's recommendation regarding these amendments, and 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 it can be seen with certainty that the revisions will not result in a potentially significant physical impact on the environment; and

**WHEREAS**, all legal prerequisites to the adoption of this ordinance have occurred.

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

**Section 1. Recitals.**

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

**Section 2. Findings re CEQA.**

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. The revisions maintain the status quo for permitting, licensing, and regulation of certain STLUs and STARs within the City. 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. Findings re General Plan Compliance.**

The proposed amendments in this ordinance are consistent with the City's General Plan.



- A. Land Use Element Primary Goal number 1 states, "The Land Use Plan seeks to retain and enhance established residential neighborhoods, commercial and industrial districts, recreational resources, community-activity areas and amenities, and open spaces that improve the community's quality of life, enhance the appeal of our many attractions, maintain our small-town character, and ensure long-term environmental and fiscal health." The proposed amendments are consistent with this goal because they continue to place reasonable restrictions on short-term-lodging and other transitory-lodging uses to maintain neighborhood character and health.
- B. Land Use Element Primary Goal number 5 states, "The Land Use Plan seeks to preserve and enhance coastal recreation, resources, access and amenities." The proposed amendments are consistent with this goal because they allow for the focused continuation of short-term-lodging uses within close proximity to coastal resources to provide access for visitors.
- C. Land Use Element Policy LU-1.01, General, states, "We accommodate the development of a variety of housing types, styles, tenure and densities that are accessible to and meet preferences for different neighborhood types (e.g., mixed use pedestrian environments and traditional suburban neighborhoods), physical abilities and income levels, pursuant to the Land Use Plan and Housing Element." The proposed amendments are consistent with this policy because they allow for the maintenance of a diverse spectrum of housing opportunities, including affordable low- and medium-density residential neighborhoods, while permitting commercial lodging uses and transitory-lodging facilities that are compatible with residentially-focused neighborhoods.
- D. Land Use Element Policy LU-2.03, Neighborhood Compatibility, states, "We require that commercial projects abutting residential neighborhoods be designed and operated to protect residents from the effects of noise, light, odors, vibration traffic, parking and other operational impacts." The proposed amendments are consistent with this policy because short-term lodging units, being taxed similarly to hotels, motels, and other commercial lodging units, are by definition not residential projects, and the proposed amendments preserve the City's current requirement that these commercial lodging uses maintain compatibility with surrounding residential neighborhoods and not exceed limits to the density of short-term lodging units and transitory lodging facilities within those neighborhoods.
- E. Land Use Element Policy LU-3.05, Stand Alone Residential Uses, states, "In Mixed Use areas MU3.1, MU3.3, and MU5, stand-alone residential uses are permitted. In these areas, we require stand-alone dwellings to be compatible with adjacent commercial and mixed uses and with adjacent neighborhoods...." The proposed amendments are consistent with this policy because they continue to permit commercial lodging uses that could

occupy stand-alone residential structures and contribute more to a mixed-use zone than residential uses.

- F. Land Use Element Policy LU-10.16, Residential Buffers, states, "While entertainment and cultural uses are focuses of the [North Beach] Area's revitalization, we require new development to be compatible with nearby residential uses through horizontal distance requirements and building and site design standards established by the Zoning Ordinance and Specific Plan." The proposed amendments are consistent with this policy because they continue to encourage short-term lodging uses to locate within mixed-use, visitor-serving areas which help provide a buffer between more intense commercial uses and less intense residential neighborhoods.
- G. Land Use Element Policy LU-11.03, Flexibility, states, "We allow flexibility to accommodate market changes for the mix of uses identified in the Del Mar/T-Zone Mixed Use Guide, if doing so promotes achieving the Area's vision and improves livability, reduces vehicular trips, creates community gathering places and activity nodes, or helps strengthen the its character and identity." The proposed amendments are consistent with this policy because they continue to provide for the enhancement of that area's visitor-serving focus and provides opportunities for commercial lodging within close proximity to activity nodes.
- H. Land Use Element Policy LU-12.07, Economic Development, states, "We leverage Del Mar/T-Zone and Pier Bowl and Pier economic development efforts and special events to enhance regional appeal and encourage visitors to visit both destinations. The City will support efforts to develop tools that aid in the Area's revitalization." The proposed amendments are consistent with this policy because they continue to permit short-term-lodging uses within the Pier Bowl and Del Mar/T-Zone Focus Areas, which encourages the visitation and revitalization of both areas due to the attractiveness of STLUs to visitors.
- I. Economic Development Policy ED-1.04, Long-Term Benefits, states, "We consider long-term benefits, not just short-term returns, in our decision-making processes." The proposed amendments are consistent with this policy because they continue to strike the balance necessary to ensure the long-term attractiveness and viability of the City's residential neighborhoods with the ability to generate more tax revenue at their expense.
- J. Coastal Element Policy C-1.14, Overnight Accommodations, states, "We protect, encourage and, where feasible, provide low cost overnight accommodations in the Coastal Zone, including the possibility of a youth or elder hostel." The proposed amendments are consistent with this policy because they continue to provide for the continuation of visitor-serving short-term lodging accommodations within the Coastal Zone.

**Section 4. Findings re Public Health, Safety, and Welfare.**

The proposed amendments will not adversely affect public health, safety, or welfare. In addition to the facts articulated in the recitals to this ordinance and the findings in the STLU ordinances, all of which are incorporated herein by this reference, the City Council also finds that the proposed amendments in this ordinance will not adversely affect public health, safety, or welfare, in that the proposed amendments achieve the goals of the General Plan as stated in the staff report and in Section 3 above. Additionally, the proposed amendments ameliorate the negative impacts created by short-term-lodging uses on traditional neighborhood settings by appropriately restricting short-term-lodging uses to maintain residential neighborhood compatibility. The proposed amendments also mitigate negative impacts created by non-residential commercial uses in residential zones. The proposed amendments continue to limit lodging uses in residential zones to the extent necessary to maintain compatibility with traditional neighborhood environments, while also limiting the potential for lodging uses to expand into areas of the City that are less appropriate. The proposed amendments also protect land uses in the coastal zone by ensuring that the STLU ordinances comply with the requirements of the Coastal Commission and the City's LUP. Finally, the proposed amendments protect the public health, safety, and welfare by appropriately balancing residential compatibility concerns with private property rights.

**Section 5.** SCMC section 17.16.145 Short-term Lodging Unit (or STLU) Zoning Permit, subsection (A) Purpose and Intent, is amended to read in its entirety as follows:

- A. Purpose and Intent; Zoning Permit Required. The STLU zoning permit process prescribed in this chapter is to provide for a more expeditious and streamlined review and approval procedure for STLUs that are consistent with the standards of this title. An STLU zoning permit is required to operate an STLU.

**Section 6.** SCMC section 17.16.145 Short-term Lodging Unit (or STLU) Zoning Permit, subsection (E) Recordation, is amended as follows:

The phrase "CITY'S RIGHT TO NOTICE OF CHANGE IN OWNERSHIP" is replaced with "REQUEST FOR NOTICE AS AUTHORIZED BY CIVIL CODE SECTION 2924b, SUBD. (a)."

**Section 7.** SCMC section 17.16.145 Short-term Lodging Unit (or STLU) Zoning Permit, subsection (G) Modifications Requested by Applicant, is amended as follows:

The phrase "Modifications of an Approved Application" is replaced with "Applicant Requests to Change Approved Applications."

**Section 8.** SCMC section 17.16.146 Short-term Apartment Rental Permit, subsection (A) Purpose and Intent, is amended to read in its entirety as follows:

- A. Purpose and Intent; STAR Permit Required. It is the purpose of the Short-term Apartment Rental ("STAR") permit process to provide for the

streamlined review of uses that may have an impact on the surrounding environment and require discretionary review, but due to their nature, scale or location do not require discretionary consideration by the Planning Commission. The STAR permit process has as its purpose the same goals for uses described for the Minor Conditional Use Permit process included in Section 17.16.060A. Conditional Use Permits Purpose and Intent of this chapter, with the exception of the owner-specific nature of the permit not running with the land. A STAR permit is required to operate a STAR.

**Section 9.** San Clemente Municipal Code (SCMC) section 17.28.292, subsection (C)(9), is amended by deleting "d" thereof.

**Section 10.** San Clemente Municipal Code (SCMC) section 17.28.292 Short Term Lodging Units, subsection (C)(11), is amended to read in its entirety as follows:

11. **Occupancy Limit.** The maximum number of renters and guests in an STLU may not exceed two persons per legal bedroom plus two persons, but in no event may the maximum occupancy of any STLU exceed 10 or the maximum allowed under Title 15 of the code, whichever is lower; provided, however, that dwelling units with five or more legal bedrooms may apply to the Community Development Director for a waiver of the 10-person occupancy limit, which the Director may approve, conditionally approve, or deny based on reasonable and objective criteria. The Community Development Director's decision on a waiver of the 10-person occupancy limit is discretionary but shall not be unreasonably withheld. The Director shall establish reasonable and objective criteria, based upon legal bedrooms, for evaluating the 10-person waiver requests and shall submit the criteria to the City Council for adoption by resolution. The criteria may be amended by resolution. The STLU owner shall by written agreement with the renter limit overnight occupancy of the STLU to the maximum number of guests.

**Section 11.** SCMC section 17.28.292 Short Term Lodging Units, subsection (C)(12), is amended as follows:

The reference to "17.28.292C.5" is deleted and replaced with "17.28.292(C)(5)."

The reference to "17.28.292C.11, Occupancy Limit and Parking" is deleted and replaced with "17.28.292(C)(11), Occupancy Limit."

**Section 12.** SCMC section 17.28.292, subsection (D), is amended to read in its entirety as follows:

- D. **Additional Operational Standard for STARs.** In addition to the operating standards for STLUs specified in subsection (C) of this section, the following operating standard applies to STARs: A STAR owner or the owner's trained and qualified property manager must operate the STAR and must sleep within a habitable room in a unit on the property every night that a unit in

the STAR is rented for short-term lodging purposes. The Director of Community Development shall develop reasonable and appropriate standards for property-manager training and qualification and shall submit them to the City Council for adoption by resolution. The standards may be amended by resolution.

**Section 13.** SCMC section 17.28.292, subsection (E)(2), is amended to read in its entirety as follows:

2. The number of STLUs excluding STARs, in any STLU Allowed Area, as reflected in the STLU Allowed Areas maps in Appendix C of this Title, shall be limited to a maximum of 20 percent of the total housing units within each STLU Allowed Area, as reflected in the STLU Allowed Areas maps in Appendix C of this Title.

**Section 14.** SCMC section 17.32.030 Residential Use Regulations, Table 17.32.030, footnote 20, is amended to read in its entirety as follows:

<sup>20</sup> STLUs are only permitted on lots that are designated for STLUs on the City's current adopted "Short-Term Lodging Units (STLU) Allowed Areas" map in Appendix C of this Title.

**Section 15.** SCMC section 17.72.060 Nonconforming Use Restrictions, subsection (G)(1), is amended to read in its entirety as follows:

1. STLUs and STARs.
  - a. Generally. Any residential use that was legally established and legally operating as of February 2, 2016 (including any legitimate legal and appropriately licensed home occupation and any other legitimate and legal incidental and accessory commercial use) but that is categorized by the provisions of this Title as a Short-term Lodging Unit ("STLU") or Short-term Apartment Rental ("STAR") and does not conform to the development standards of Subsections 17.28.292E. and F. is subject to an amortization period of two years, or until the sale or transfer of the property whichever occurs first, as long as that STLU or STAR is operated according to the operational standards of Subsections 17.28.292(C) and (D) with a valid STLU operating license under Chapter 3.24 and in accordance with other local, state, and federal law.
  - b. Notwithstanding subsection (G)(1)(a) above, the owner of an STLU outside of the RVL and RL zones may, if the owner is in good standing, extend the two-year amortization period to ten years by submitting a complete, written application to extend the amortization period on a form provided by the Director of Community Development within 30 days after -the Director makes extension application forms available to the public. "In good standing" here

means: current on remittance of STLU TOT to the City and with no violation of the City's municipal code, including the TOT ordinance, that was not cured within 30 days of the notice of violation. The Director's decision on amortization-extension applications is ministerial.

- c. Any amortization extension granted under subsection (G)(1)(b) above constitutes a use permit that is specific and personal to the STLU owner and does not run with the land, and it terminates upon any sale or transfer of the STLU property as defined in subsection (G)(3) below.

**Section 16.** SCMC section 17.72.060 Nonconforming Use Restrictions, subsection (G)(4), is amended to read in its entirety as follows:

4. Amortization Extension.

- a. Eligibility. The owner of (i) a legal nonconforming STLU or STAR in an RVL or RL zone or (ii) a legal nonconforming boarding house in any residential zone may apply for an extension of the amortization period by making a written request to the Community Development Director. (Legal nonconforming STLUs and STARs in other residential zones are subject to a different amortization process under subsection (G)(1)(b).)
- b. Timing. Such request shall be made before the amortization period ends unless the Community Development Director determines that good cause is shown for late submission of the request.
- c. Hearing Officer. A timely request for an extension of the amortization period shall be heard by a neutral third-party hearing officer within 30 days of receipt of the request. The party requesting the extension shall pay the costs of the hearing, including the cost of the hearing officer, and shall deposit funds sufficient to cover those costs when the written request for extension is submitted to the City.
- d. Criteria. A request for an extension of the amortization period shall only be issued if the property owner demonstrates to the hearing officer's satisfaction that the specified amortization period is unreasonably short and that an extension is in fact necessary to avoid a constitutional taking. Factors may include, but are not limited to, the extent of the particular owner's investment that is unique to the non-conforming use and does not serve any conforming use of the property, the extent of the owner's investment that will not be recovered on sale of the property the owner's investment-backed expectations in light of current and pending regulation at the time that the investment was made, replacement cost of improvements that

might have been made that only serve the nonconforming use, and the length of time that the owner has had the benefit of the investment before the use became nonconforming.

- e. Burden. The burden is on the owner to demonstrate that the general two-year period is unreasonable in the owner's particular case.

**Section 17.** A new Appendix C for "Subject-specific Maps" is added to Title 17 of the Municipal Code. A copy of the appendix is included as **Exhibit A** to this ordinance. The appendix includes a "Short-Term Lodging Units (STLU) Allowed Areas" map. Other subject-specific maps may be added to the appendix in the future.

**Section 18.** 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. Restatement of existing provisions does not constitute a new enactment.

**Section 19.** 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 20.** 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 21.** 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 22.** 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 23.** To ensure that there is no ambiguous overlap or gap in regulation, this ordinance takes effect either (a) 30 days after adoption or (b) on June 17, 2018, whichever is later.

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

Mayor  
City of San Clemente, California

ATTEST:

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

APPROVED AS TO FORM:

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

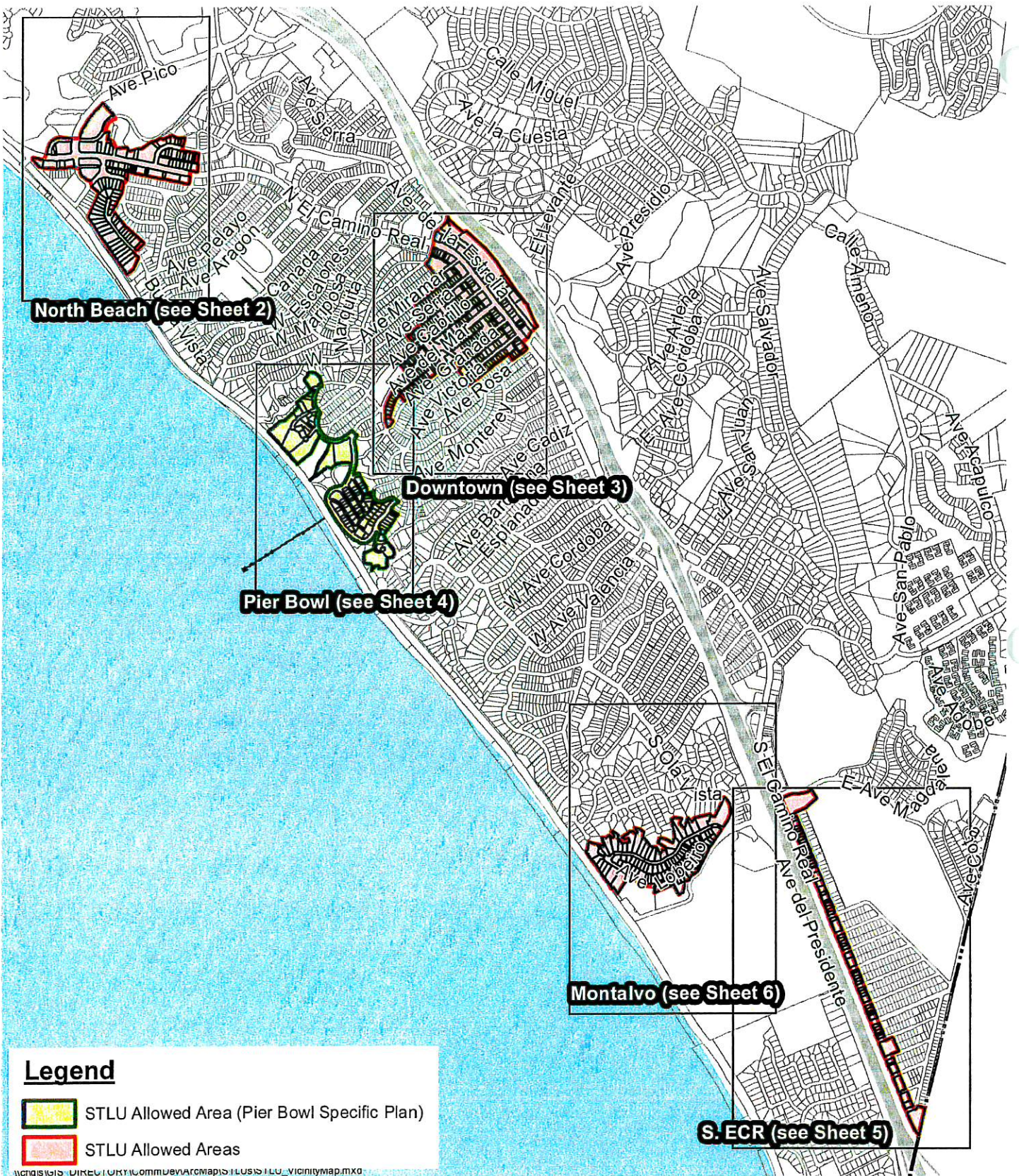


## Exhibit A

### APPENDIX C

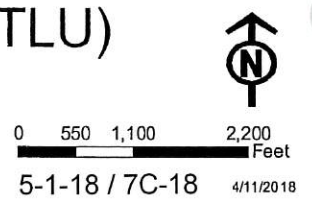
#### Subject-specific Maps

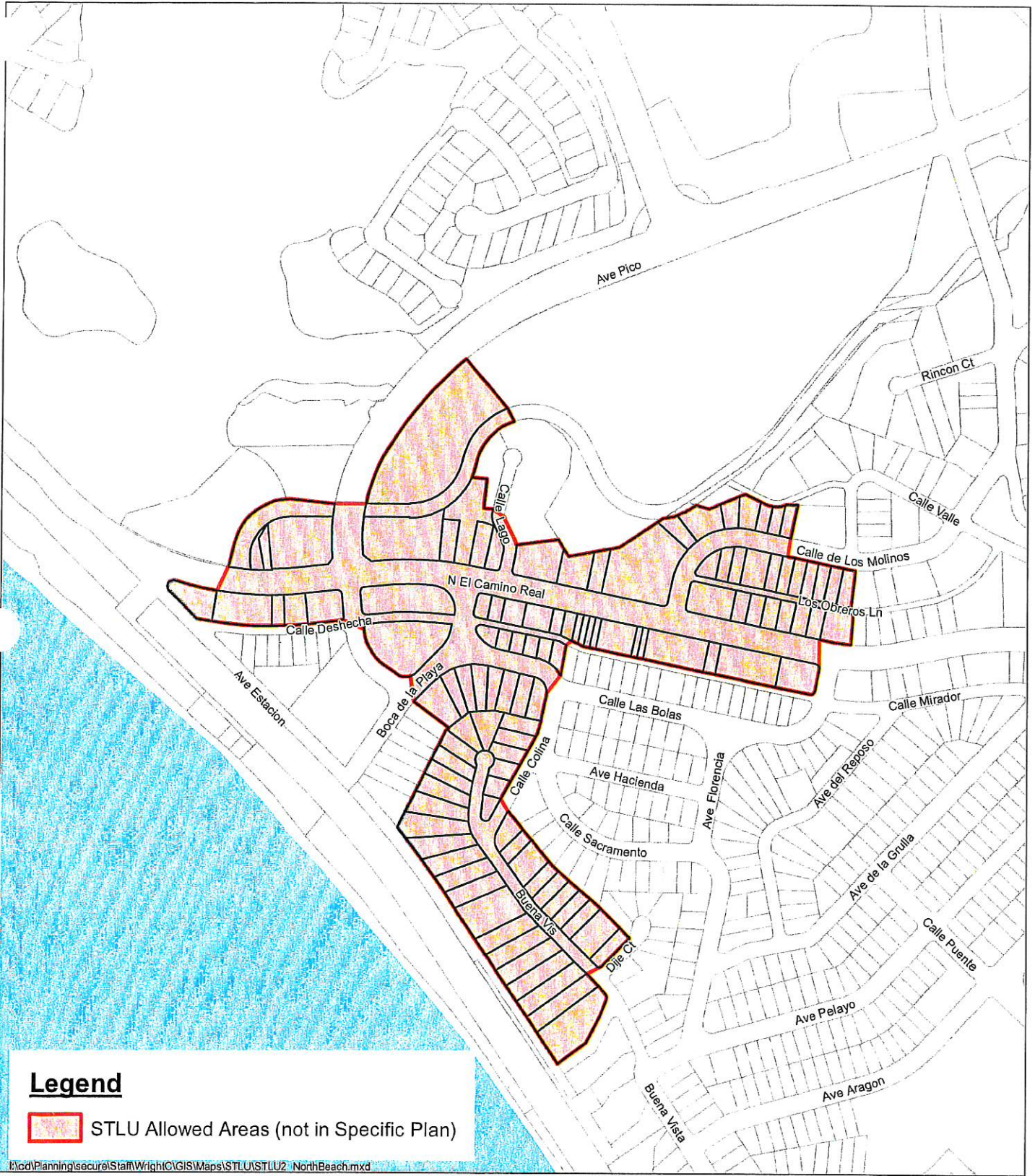
<b>Map 1 "Short-Term Lodging Units (STLU) Allowed Areas"</b>	
Sheet 1	"Short-Term Lodging Units (STLU) Allowed Areas" Vicinity Map (Ord. No. ___; Ord. 1622, SEC. 9 and 10.)
Sheet 2	"Short-Term Lodging Units (STLU) Allowed Areas – North Beach" (Ord. No. ___; Ord. 1622, SEC. 9 and 10.)
Sheet 3	"Short-Term Lodging Units (STLU) Allowed Areas – Downtown" (Ord. 1622, SEC. 9 and 10.)
Sheet 4	"Short-Term Lodging Units (STLU) Allowed Areas – Pier Bowl" (Ord. 1622, SEC. 9 and 10.)
Sheet 5	"Short-Term Lodging Units (STLU) Allowed Areas – S. ECR" (Ord. 1622, SEC. 9 and 10.)
Sheet 6	"Short-Term Lodging Units (STLU) Allowed Areas – Montalvo/Lobeiro" (Ord. No. ___; Ord. 1622, SEC. 9 and 10.)




# Sheet 1 - Short-Term Lodging Units (STLU) Allowed Areas - Vicinity Map

(DRAFT, adoption date pending)





**Legend**

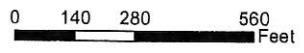
 STLU Allowed Areas (not in Specific Plan)

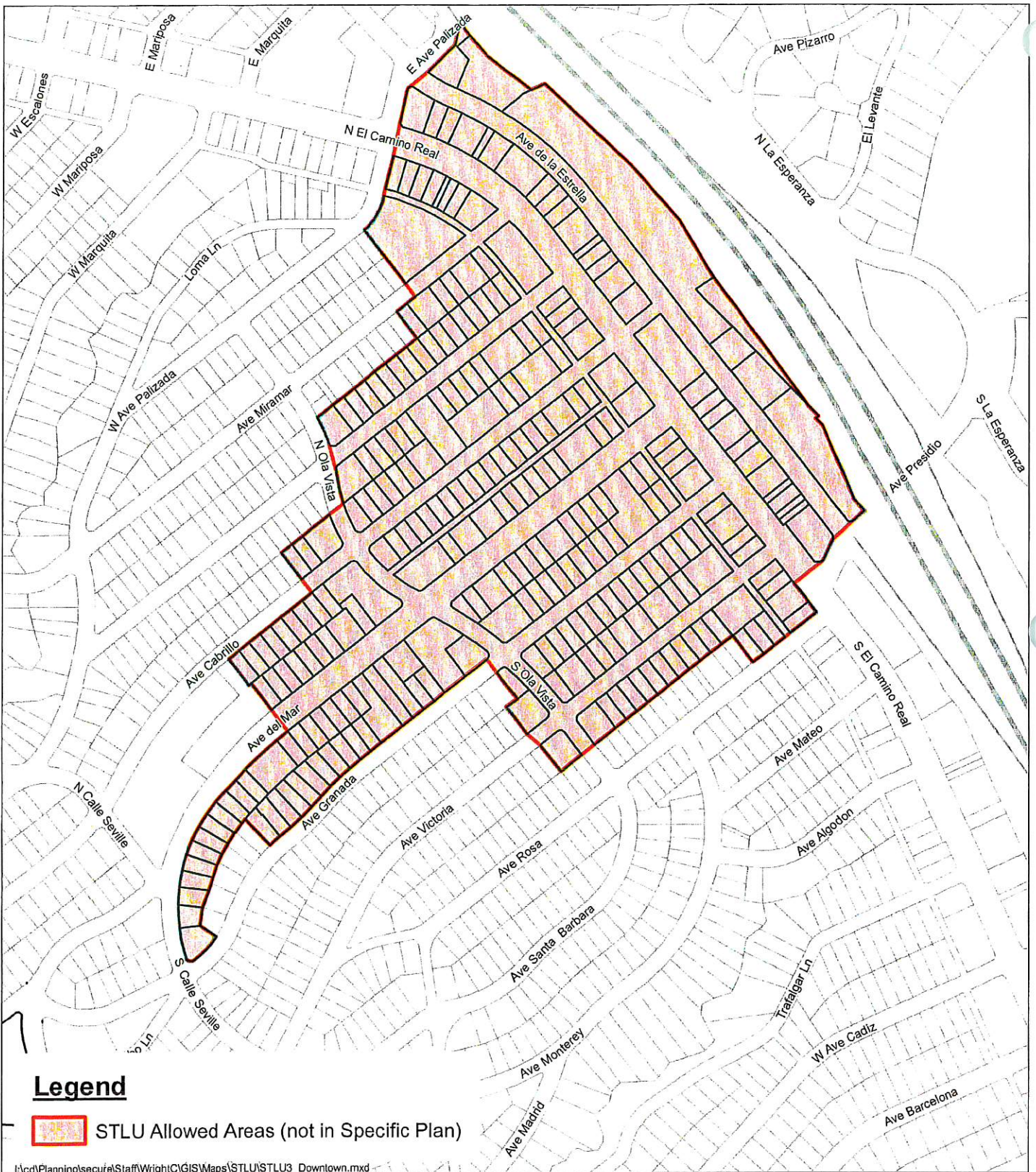
F:\cd\Planning\secure\Staff\wright\GIS\Maps\STLU\STLU2 - NorthBeach.mxd



# Sheet 2 - Short-Term Lodging Units (STLU) Allowed Areas - North Beach

(DRAFT, adoption date pending)





**Legend**

 STLU Allowed Areas (not in Specific Plan)

I:\cd\Planning\secure\Staff\Wright\C\GIS\Maps\STLU\STLU3\_Downtown.mxd



# Sheet 3 - Short-Term Lodging Units (STLU) Allowed Areas - Downtown

(Adopted: May 17, 2016)



0 130 260 520 Feet

5-1-18 / 7C-20 9/20/2017



# Sheet 4 - Short-Term Lodging Units (STLU) Allowed Areas - Pier Bowl

(Adopted: May 16, 2016)



0 115 230 460  
Feet

5-1-18 / 7C-21 4/11/2018



# Sheet 5 - Short-Term Lodging Units (STLU) Allowed Areas - S. ECR

(Adopted: May 17, 2016)



0 180 360 720 Feet

5-1-18 / 7C-22 9/20/2017



**Legend**

 STLU Allowed Areas (not in Specific Plan)

I:\cd\Planning\secure\Staff\Wright\GIS\Maps\STLU\STLU6\_Montalvo\_Lobeiro.mxd



**Sheet 6 - Short-Term Lodging Units (STLU)  
Allowed Areas - Montalvo/Lobeiro**

(DRAFT, adoption date pending)



0 155 310 620 Feet

5-1-18 / 7C-23 9/20/2017

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 unanimously 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



17.16.145 - Short-term Lodging Unit (or STLU) Zoning Permit.

A. **Purpose and Intent; Zoning Permit Required.** The STLU zoning permit process prescribed in this chapter is to provide for a more expeditious and streamlined review and approval procedure for STLUs that are consistent with the standards of this title. An STLU zoning permit is required to operate an STLU.

\* \* \*

E. **Recordation** . As a condition of every STLU zoning permit, the STLU owner must cause to be recorded with the County Clerk—Recorder, at the owner’s expense, a ~~“CITY’S RIGHT TO NOTICE OF CHANGE IN OWNERSHIP REQUEST FOR NOTICE AS AUTHORIZED BY CIVIL CODE SECTION 2924b, SUBD. (a)”~~ covenant. It must state that the property owner covenants to give the City notice of any change in ownership upon conveyance of the property. Notice must be by the owner or by the owner’s escrow agent. The STLU zoning permit is void as of the date of conveyance.

\* \* \*

G. **Modifications Requested by the Applicant** . Modifications requested by the applicant to approved STLU zoning permits shall be reviewed in accordance with Section 17.12.180, ~~Modifications of an~~Applicant Requests to Change Approved Application Applications, of this title.

\* \* \*

17.16.146 - Short-term Apartment Rental Permit.

A. **Purpose and Intent; STAR Permit Required.** It is the purpose of the Short-term Apartment Rental (“STAR”) permit process to provide for the streamlined review of uses that may have an impact on the surrounding environment and require discretionary review, but due to their nature, scale or location do not require discretionary consideration by the Planning Commission. The STAR permit process has as its purpose the same goals for uses described for the Minor Conditional Use Permit process included in Section 17.16.060A. Conditional Use Permits Purpose and Intent of this chapter, with the exception of the owner-specific nature of the permit not running with the land. A STAR permit is required to operate a STAR.

\* \* \*

## 17.28.292 - Short Term Lodging Units.

\* \* \*

### C. **Operating Standards for STLUs** . The following operational standards apply to STLUs:

\* \* \*

9. Notice. Each STLU owner shall, upon issuance of any STLU zoning permit or upon any approved change to an existing STLU zoning permit, provide written notice to the Community Development 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.~~

\* \* \*

- ~~11. Occupancy Limit and Parking. The number of renters and guests permitted in each STLU shall be limited based on the number, or legal, on-site parking spaces as listed in Table 17.28.292A, Number of Renters Permitted. The number of parking spaces available for an STLU shall include only those parking spaces not required for other on-site uses, such as that required for any guesthouses, second residential dwelling units, the primary dwelling unit if the rental is a STAR, or any other uses that require additional parking. All parking shall be provided on site and any parking spaces used to calculate the maximum number of renters and guests for an STLU, including STARs, shall be maintained so that they are unobstructed and accessible at all times during a short term rental. Legal parking spaces in front of a garage may be counted if the parking spaces with the garage are not counted.~~

Table 17.28.292A. Number of Renters Permitted

Number of parking spaces on-site	Number of renters and guests permitted
1	4
2	8
3 or more	12

11. Occupancy Limit. The maximum number of renters and guests in an STLU may not exceed ~~the lesser of (1) the occupancy limits specified in this subsection, or (2) two persons per legal bedroom plus two persons, but in no event may~~ the maximum occupancy of any STLU exceed 10 or the maximum allowed under Title 15 of the code, whichever is lower; provided, however, that dwelling units with five or more legal bedrooms may apply to the Community Development Director for a waiver of the 10-person occupancy limit, which the Director may approve, conditionally approve, or deny based on reasonable and objective criteria. The Community Development Director's decision on a waiver of the 10-person occupancy limit is discretionary but shall not be unreasonably withheld. The Director shall establish reasonable and objective criteria, based upon legal bedrooms, for evaluating the 10-person waiver requests and shall submit the criteria to the City Council for adoption by resolution. The criteria may be amended by resolution. The STLU owner shall by written agreement with the renter limit overnight occupancy of the STLU to the maximum number of guests. ~~The number of renters is limited by the number approved in the STLU operating license and STLU zoning permit, whichever is lower.~~

12. Upon notification that an STLU renter or a renter's guest has violated Subsection 17.28.292(C)(5), Noise and Disorderly Conduct, or 17.28.292(C)(11), Occupancy Limit ~~and Parking~~, 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.

D. **Additional Operational Standard for STARs** . In addition to the operating standards for STLUs specified in subsection (C) of this section, the following operating standard applies to STARs: A STAR owner or the owner's trained and qualified property manager must ~~own and~~ operate the STAR and must sleep within a habitable room in a unit on the property every night that ~~some~~ a unit in the STAR is rented for short-term lodging purposes. The Director of Community Development shall develop reasonable and appropriate standards for property-manager training and qualification and shall submit them to the City Council for adoption by resolution. The standards may be amended by resolution.

E. **Minimum Development Standards for STLUs.**

\* \* \*

- 2. ~~Zone Density.~~ The number of STLUs excluding STARs, in any residential zone STLU Allowed Area, as reflected in the STLU Allowed Areas maps in Appendix C of this Title, shall be limited to a maximum of 20 percent of the total housing units within ~~that particular zone's boundary~~ each STLU Allowed Area, as reflected in the STLU Allowed Areas maps in Appendix C of this Title.

\* \* \*

17.32.030 - Residential Use Regulations.

\* \* \*

**Table 17.32.030 - Residential Zone Uses**

Use	RVL	RL	RML	RM	RH
-----	-----	----	-----	----	----

\* \* \*

**2. Lodging**

STLU <sup>19</sup>		-			O <sup>20</sup>
--------------------	--	---	--	--	-----------------

\* \* \*

<sup>20</sup> STLUs are only permitted on lots ~~49 through 54 of Block 1 of Tract 821, and Lots 31 through 39 of Block 4 of Tract 821~~ that are designated for STLUs on the City's current adopted "Short-Term Lodging Units (STLU) Allowed Areas" map in Appendix C of this Title.

\* \* \*

17.72.060 - Nonconforming Use Restrictions.

\* \* \*

G. **Nonconforming Residential Uses .**

- 1. STLUs and STARs.

- a. Generally. Any residential use that was legally established and legally operating as of February 2, 2016 (including any legitimate legal and appropriately licensed home occupation and any other legitimate and legal incidental and accessory commercial use) but that is categorized by the provisions of this Title as a Short-term Lodging Unit ("STLU") or Short-term

Apartment Rental ("STAR") and does not conform to the development standards of Subsections 17.28.292E. and F. is subject to an amortization period of two years, or until the sale or transfer of the property whichever occurs first, as long as that STLU or STAR is operated according to the operational standards of Subsections 17.28.292(C~~7~~) and (D~~7~~) with a valid STLU operating license under Chapter 3.24 and in accordance with other local, state, and federal law.

- b. Notwithstanding subsection (G)(1)(a) above, the owner of an STLU outside of the RVL and RL zones may, if the owner is in good standing, extend the two-year amortization period to ten years by submitting a complete, written application to extend the amortization period on a form provided by the Director of Community Development within 30 days after the Director makes extension application forms available to the public. "In good standing" here means: current on remittance of STLU TOT to the City and with no violation of the City's municipal code, including the TOT ordinance, that was not cured within 30 days of the notice of violation. The Director's decision on amortization-extension applications is ministerial.
- c. Any amortization extension granted under subsection (G)(1)(b) above constitutes a use permit that is specific and personal to the STLU owner and does not run with the land, and it terminates upon any sale or transfer of the STLU property as defined in subsection (G)(3) below.

\* \* \*

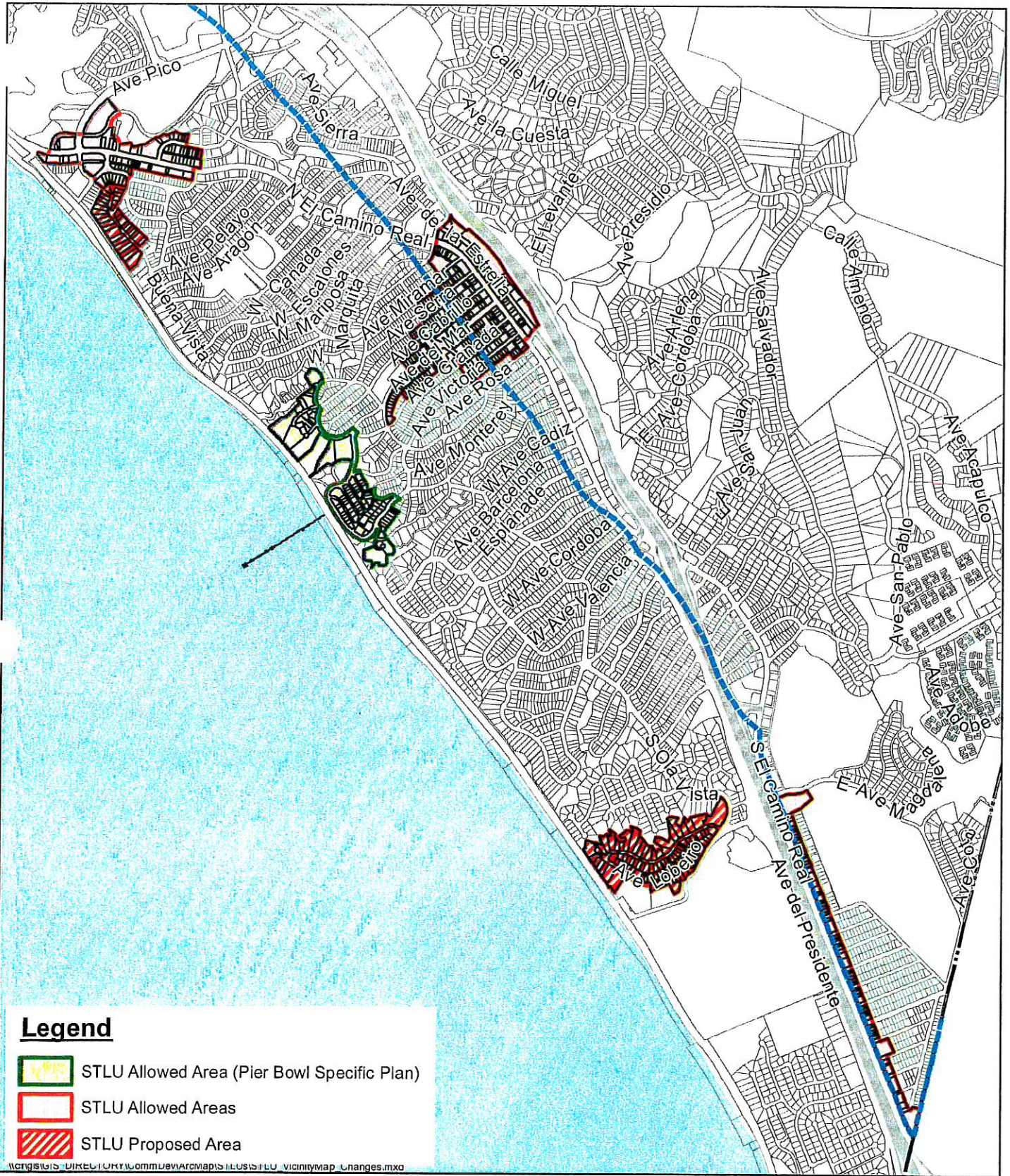
#### 4. Amortization Extension.

- 4a. Extension Eligibility. The owner of (i) a legal nonconforming STLU~~7~~ or STAR~~7~~, ~~or in an RVL or RL zone~~ or (ii) a legal nonconforming boarding house in any residential zone may apply for an extension of the amortization period by making a written request to the Community Development Director. (Legal nonconforming STLUs and STARS in other residential zones are subject to a different amortization process under subsection (G)(1)(b).)
- b. Timing. Such request shall be made before the amortization period ends unless the Community Development Director determines that good cause is shown for late submission of the request. ~~A request for an extension of the amortization period shall~~
- c. Hearing Officer. A timely request for an extension of the amortization period shall be heard by a neutral third-party hearing officer within 30 days of receipt of the request. The party requesting the extension shall pay the costs of the hearing, including the cost of the hearing officer, and shall deposit funds sufficient to cover those costs when the written request for extension is submitted to the City.
- d. Criteria. A request for an extension of the amortization period shall only be

issued if the property owner demonstrates to the ~~City's~~ hearing officer's satisfaction that the specified amortization period is unreasonably short and that an extension is in fact necessary to avoid a constitutional taking. Factors may include, but are not limited to, the extent of the particular owner's investment that is unique to the non-conforming use and does not serve any conforming use of the property, the extent of the owner's investment that will not be recovered on sale of the property the owner's investment-backed expectations in light of current and pending regulation at the time that the investment was made, replacement cost of improvements that might have been made that only serve the nonconforming use, and the length of time that the owner has had the benefit of the investment before the use became nonconforming.

- e. Burden. The burden is on the owner to demonstrate that the general two-year period is unreasonable in the owner's particular case.

\* \* \*



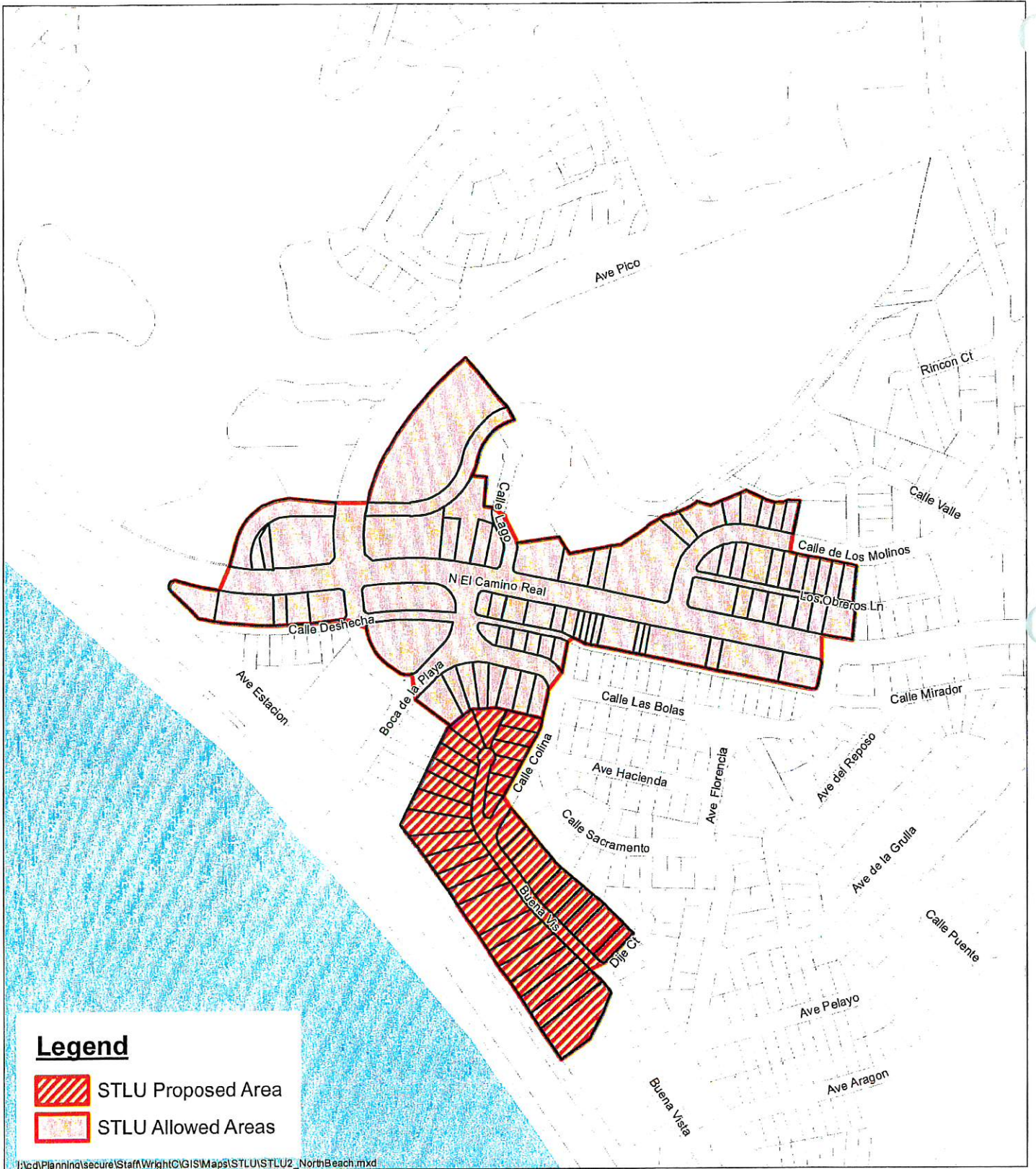
# Short-Term Lodging Units (STLU) Allowed Areas - Vicinity Map

(DRAFT, adoption date pending)



0 550 1,100 2,200  
Feet

5-1-18 / 7C-31 4/11/2018



**Legend**

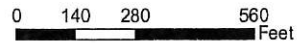
-  STLU Proposed Area
-  STLU Allowed Areas

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# Short-Term Lodging Units (STLU) Allowed Areas - North Beach

(DRAFT, adoption date pending)

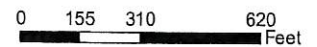






# Short-Term Lodging Units (STLU) Allowed Areas - Montalvo/Lobeiro

(DRAFT, adoption date pending)



5-1-18 / 7C-33

10/17/2017



## STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: April 18, 2018

**PLANNER:** Carl Stiehl, Senior Planner

**SUBJECT:** **STLU Zoning Amendment 17-392**, a request to consider forwarding a recommendation to the City Council to amend San Clemente Municipal Code Title 17, The Zoning Ordinance, regarding regulation of Short-term Lodging Units.

### **REQUIRED FINDINGS**

Before recommending the proposed amendment, the Commission must make the findings below. The draft Resolution (Attachment 1) and the analysis section of this report demonstrate compliance with these findings.

#### ***Zoning Amendment, Section 17.16.040***

1. The proposed amendment is consistent with the General Plan.
2. The proposed amendment will not adversely affect the public health, safety, or welfare.

### **BACKGROUND**

In May 2016 the City Council adopted Ordinances 1622, 1623, and 1624 regulating short-term lodging units (the "STLU ordinances"). The STLU ordinances provided a comprehensive set of operational and zoning regulations for STLUs. In developing 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, the City has gained experience about the interrelationship of STLU operating regulations and zoning laws and has had the opportunity to initiate and prosecute enforcement actions relating to STLUs.

During that same time, the San Clemente Vacation Rental Alliance (the "Alliance") challenged certain aspects of the STLU ordinances. Among other arguments, the Alliance lawsuit contends that the STLU ordinances constituted a "development project" under the California Coastal Act and that as a development project the ordinances required a Coastal Development Permit. The City disagreed with this position. City representatives and representatives of the Alliance met in court-ordered mediated settlement conferences. One central issue in these sessions was the rationale for the ordinances' disparate treatment of STLUs (as compared to traditional housing with the same number of occupants) on Buena Vista in North Beach and on Avenida Montalvo.

The Alliance's view was that these areas were historically oriented toward short-term vacation rentals and would almost certainly be required for inclusion in the STLU overlay if Coastal Commission approval for the ordinances had been sought. In the meantime, the City has actively engaged with the Coastal Commission in discussing these issues in connection with its certification of the City's Local Coastal Plan. The Commission's approval of the LCP Land Use Plan ("LUP") contemplated the provision and regulation of STLUs subject to the City's Implementation Plan, which is still pending.

The City and the Alliance have reached a negotiated settlement of the active litigation. Further, the Coastal Commission's deliberations and action on the LUP have given the City insights into how the Commission will view STLU regulations as codified in the City Code and as proposed in the Implementation Plan. The settlement requires consideration and passage of certain changes in the STLU ordinances, which staff is recommending for the reasons discussed below. These amendments will allow the STLU ordinances to remain on the books and will require dismissal of the challenge to them.

In its November 21, 2017 initiation of this Zoning Amendment, the City Council directed that several modifications be made in the draft ordinance presented to the Council and that special consideration be given to some issues described below, which also resulted in re-writes to the draft ordinance presented to the Council. The Alliance has consented to those Council-initiated changes made to the November 21, 2017 draft.

Noticing was completed in accordance with State law and the San Clemente Municipal Code.

### **DISCUSSION**

The proposed amendment will do the following:

1. Eliminate an STLU-specific parking standard, leaving STLUs subject to the same parking regulations that govern residential uses in the same area. (Draft Ord., SEC. 7 and 8.)
2. Allow a STAR owner to satisfy the occupancy requirement by having a "trained and qualified property manager" reside at the STAR, with standards for manager training and qualifications to be determined later by City resolution. (SEC. 10.)
3. Designate STLU-permitted areas by reference to a map of "Short-Term Lodging Units (STLU) Allowed Areas," instead of to a parcel description in the code. (SEC. 11.)
4. Expand slightly the STLU Allowed Areas to include some additional lots on Avenida Montalvo and on Buena Vista. (SEC. 13.) The "Short-Term Lodging Units (STLU) Allowed Areas" map will be included in the Zoning Code in a new Appendix C. A copy of the map is included as Exhibit A to the draft ordinance. The draft ordinance is included as Attachment 2 to this report. A similar map that highlights the new STLU-allowed areas is included as Attachment 4 to this report.

5. Allow for an extended amortization period for non-conforming STLUs outside of the RVL or RL zones if the STLU owners applies for an extension, is in good standing, and meets certain requirements. "In good-standing" means "current on remittance of STLU TOT to the City and with no violation of the City's municipal code, including the TOT ordinance, that was not cured within 30 days of the notice of violation." (SEC. 12.) This avoids denial of the extended amortization due to minor lapses that are quickly and easily cured.

The November 21, 2017 Council minutes contain the following requests and instructions for Commission consideration, which are addressed in the Zoning Amendment or accompanying enactments as explained in the following italicized text:

1. There are to be no proposed or discussed changes to Ordinances Nos. 1622 and 1623 in relation to the Residential Low zone.

*The proposed Zoning Amendment has been modified to exclude changes to the Residential Low zone.*

2. *STLU On-Street Parking.* A parking permit process is to be initiated in all STLU zones.

*The staff work program on the Implementation Plan will include exploration of appropriate on-street permit parking areas.*

3. *STAR property manager.* A 300' distance requirement between short-term apartment rentals (STARS) is to be incorporated and maintained.

*This provision is incorporated into the amended ordinance.*

4. *Modifications to the STLU overlay.* No areas outside the areas indicated on the map identified in Attachment 2 to the Administrative Report are to be considered for STLUs, but a reduction in areas may be considered. No increase to the maximum 20% density limit shall be considered. Consideration is to be given as to whether Buena Vista should be included in the STLU zoning boundaries in light of the parking situation.

*The proposed STLU area maps contain this designation. The proposed Zoning Amendment has been modified to clarify how the 20% cap is calculated and that it is calculated and capped within each specific STLU area.*

5. *Allowances for extended amortization.* A maximum total amortization of 10 years (2016 to 2018 is 2 years + an additional 8 years) shall be permitted for STLUs with clean records that are located in the medium and high density zones. City legal staff is to address non-utilized STLU permits as they relate to "use it or lose it".

*The proposed ordinance has been modified to include this maximum. The ordinance retains the "safety valve" provision to allow case-by-case review of the application of the default amortization based on stranded capital and other*

*Constitutional constraints. A priority permitting system to track unutilized STLU permits and to manage the application queue for each STLU area has been established.*

The amendment will also clarify application of the permitting requirements and conform internal cross-references within Title 17. All of the proposed changes are described in the draft ordinance (included as Attachment 2 with this report) and highlighted in context in the Code Redline document that is included as Attachment 3.

**GENERAL PLAN CONSISTENCY**

The table below summarizes how the proposed amendment is consistent with adopted policies outlined in the City of San Clemente General Plan.

**Table - General Plan Consistency**

<b>Policies and Objectives</b>	<b>Consistency Finding</b>
<p>Land Use Element Primary Goal number 1, which states, "The Land Use Plan seeks to retain and enhance established residential neighborhoods, commercial and industrial districts, recreational resources, community-activity areas and amenities, and open spaces that improve the community's quality of life, enhance the appeal of our many attractions, maintain our small-town character, and ensure long-term environmental and fiscal health."</p>	<p>Consistent. The proposed amendment continues to place reasonable restrictions on short-term lodging and other transitory-lodging uses to maintain neighborhood character and health.</p>
<p>Land Use Element Primary Goal number 5, which states, "The Land Use Plan seeks to preserve and enhance coastal recreation, resources, access and amenities."</p>	<p>Consistent. The proposed amendment allows for the focused continuation of short-term lodging uses within close proximity to coastal resources to provide access for visitors.</p>

Policies and Objectives	Consistency Finding
<p>Land Use Element Policy LU-1.01, General, which states, "We accommodate the development of a variety of housing types, styles, tenure and densities that are accessible to and meet preferences for different neighborhood types (e.g., mixed use pedestrian environments and traditional suburban neighborhoods), physical abilities and income levels, pursuant to the Land Use Plan and Housing Element."</p>	<p>Consistent. The proposed amendment allows for the maintenance of a diverse spectrum of housing opportunities, including affordable low- and medium-density residential neighborhoods, while permitting commercial lodging uses and transitory-lodging facilities that are compatible with residentially-focused neighborhoods.</p>
<p>Land Use Element Policy LU-2.03, Neighborhood Compatibility, which states, "We require that commercial projects abutting residential neighborhoods be designed and operated to protect residents from the effects of noise, light, odors, vibration traffic, parking and other operational impacts."</p>	<p>Consistent. Short-term lodging units, being taxed similarly to hotels, motels, and other commercial lodging units, are by definition not residential projects, and the proposed amendment preserves the City's current requirement that these commercial lodging uses maintain compatibility with surrounding residential neighborhoods and not exceed limits to the density of short-term lodging units and transitory lodging facilities within those neighborhoods.</p>
<p>Land Use Element Policy LU-3.05, Stand Alone Residential Uses, which states, "In Mixed Use areas MU3.1, MU3.3, and MU5, stand-alone residential uses are permitted. In these areas, we require stand-alone dwellings to be compatible with adjacent commercial and mixed uses and with adjacent neighborhoods...."</p>	<p>Consistent. The proposed amendment continues to permit commercial lodging uses that could occupy stand-alone residential structures and contribute more to a mixed-use zone than residential uses.</p>

Policies and Objectives	Consistency Finding
<p>Land Use Element Policy LU-10.16, Residential Buffers, which states, "While entertainment and cultural uses are focuses of the [North Beach] Area's revitalization, we require new development to be compatible with nearby residential uses through horizontal distance requirements and building and site design standards established by the Zoning Ordinance and Specific Plan."</p>	<p>Consistent. The proposed amendment continues to encourage short-term lodging uses to locate within mixed-use, visitor-serving areas which help provide a buffer between more intense commercial uses and less intense residential neighborhoods.</p>
<p>Land Use Element Policy LU-11.03, Flexibility, which states, "We allow flexibility to accommodate market changes for the mix of uses identified in the Del Mar/T-Zone Mixed Use Guide, if doing so promotes achieving the Area's vision and improves livability, reduces vehicular trips, creates community gathering places and activity nodes, or helps strengthen the its character and identity."</p>	<p>Consistent. The proposed amendment continues to provide for the enhancement of that area's visitor-serving focus and provides opportunities for commercial lodging within close proximity to activity nodes.</p>
<p>Land Use Element Policy LU-12.07, Economic Development, which states, "We leverage Del Mar/T-Zone and Pier Bowl and Pier economic development efforts and special events to enhance regional appeal and encourage visitors to visit both destinations. The City will support efforts to develop tools that aid in the Area's revitalization."</p>	<p>Consistent. The proposed amendment continues to permit short-term lodging uses within the Pier Bowl and Del Mar/T-Zone Focus Areas, which encourages the visitation and revitalization of both areas due to the attractiveness of STLUs to visitors.</p>

Policies and Objectives	Consistency Finding
<p>Economic Development Policy ED-1.04, Long-Term Benefits, which states, "We consider long-term benefits, not just short-term returns, in our decision-making processes."</p>	<p>Consistent. The proposed amendment continues to strike the balance necessary to ensure the long-term attractiveness and viability of the City's residential neighborhoods with the ability to generate more tax revenue at their expense.</p>
<p>Coastal Element Policy C-1.14, Overnight Accommodations, which states, "We protect, encourage and, where feasible, provide low cost overnight accommodations in the Coastal Zone, including the possibility of a youth or elder hostel."</p>	<p>Consistent. The proposed amendment continues to provide for the continuation of visitor-serving short-term lodging accommodations within the Coastal Zone.</p>

**ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA):**

The proposed ordinance has been reviewed 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.). Staff recommends that the Planning Commission recommend that the City Council find the proposed revisions to the San Clemente Municipal Code categorically exempt from CEQA under State CEQA Guidelines section 15301. State CEQA Guidelines section 15301 exempts the operation, permitting, leasing, and licensing of existing structures where the action would lead to negligible or no expansion of use. 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. The revisions maintain the status quo for permitting, licensing and regulation of certain STLUs and STARs within the City.

Staff has reviewed the exceptions to use of a categorical exemption identified in State CEQA Guidelines section 15300.2 and has concluded none of those circumstances 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.



Separate and independent from the Class 1 exemption discussed above, staff has evaluated the proposed ordinance under the common-sense exemption. Staff recommends that the Planning Commission recommend that the City Council find 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.

**CALIFORNIA COASTAL COMMISSION REVIEW**

This amendment does 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, and therefore, do not result in "development" under the California Coastal Act. Nevertheless, the City has agreed through certification of its LUP to pursue implementation of this ordinance through the Coastal Commission's review of the City's Implementation Plan.

**ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES**

1. The Planning Commission can concur with staff and recommend approval of the proposed amendment.

*This action would result in the project moving forward for review and consideration by the City Council.*

2. The Planning Commission can, at its discretion, add, modify or delete provisions of the proposed amendments.

*This action would result in any modifications being reviewed and considered by the City Council. If Planning Commission changes are accepted by the Council, it will essentially reject the negotiated settlement and require the City to return to settlement negotiations.*

3. The Planning Commission can recommend denial of the proposed amendments.

*This action would result in the Commission's recommendation being forward for review and consideration by the City Council. Again, this would also amount to a rejection of the settlement agreement if the Commission's recommendation is accepted by the Council.*

**RECOMMENDATIONS**

**STAFF RECOMMENDS THAT** the Planning Commission recommend that the City Council approve Zoning Amendment 17-392, forwarding a recommendation to the City Council to amend San Clemente Municipal Code Title 17, The Zoning Ordinance, as specified in Attachment 2.

**Attachments:**

1. Resolution No. PC 18-012
2. Draft Ordinance entitled "An Ordinance of the City Council of the City of San Clemente Approving an Amendment to Municipal Code Title 17 Regarding Regulation of Short-Term Lodging Units"  
Exhibit A: "Short-Term Lodging Units (STLU) Allowed Areas" map.
3. *Code Redline* document showing proposed changes to Title 17 in context.
4. Map highlighting new STLU-allowed areas.

**RESOLUTION NO. PC 18-012**

**A RESOLUTION OF THE PLANNING COMMISSION OF  
THE CITY OF SAN CLEMENTE, CALIFORNIA,  
RECOMMENDING THAT THE CITY COUNCIL ADOPT  
AN ORDINANCE APPROVING AN AMENDMENT TO  
MUNICIPAL CODE TITLE 17 REGARDING REGULATION  
OF SHORT-TERM LODGING UNITS**

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

**WHEREAS**, the STLU ordinances were adopted with the intent of protecting the public's health safety and welfare by ensuring neighborhood compatibility by regulating commercial, non-residential uses located in residential zones; and

**WHEREAS**, the City Council adopted, based on (among other things) recommendation from the Planning Commission, the STLU ordinances after making findings related to the health, safety, and welfare issues noted above, and

**WHEREAS**, having implemented the STLU ordinances for a period of time and receiving feedback from residents, visitors, and STLU owners, the City recognizes that the STLU ordinances will better protect the public health, safety, and welfare, and be most compatible with the General Plan by undergoing revisions; and

**WHEREAS**, a portion of the City's jurisdiction lies within the Coastal Zone; and

**WHEREAS**, section 30213 of the California Coastal Act (Pub. Res. Code §§ 30900-30900) states in relevant part, "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred"; and

**WHEREAS**, the California Coastal Commission has a policy of requiring local agencies to allow visitor-serving lodgings, such as short-term rentals (STLUs and STARS under the STLU ordinances), in the Coastal Zone; and

**WHEREAS**, City's Coastal Land Use Plan, or "LUP," which was recently certified by the Coastal Commission states that "[I]n addition to hotels and motels, the City's Coastal Zone offers timeshare units for owners and the general public and other short-term vacation rentals in the form of both Short-Term Apartment Rentals (STARS) and Short-Term Lodging Units (STLUs) and 160 camp sites in the Coastal Zone"; and

**WHEREAS**, Policy LU-49 of the LUP states, "The City shall allow the short term renting (29 days or less) of dwelling units, administratively permitted as Short Term Lodging Units (STLU) or conditionally permitted as Short Term Apartment Rentals (STAR), in residential and mixed use zones, subject to appropriate regulations minimizing

adverse impacts to neighborhoods or coastal resources. STLUs and STARs shall conform to the requirements of the underlying land use designation, and all standards and laws established by the City"; and

**WHEREAS**, the Coastal Act requires the City to implement its LUP through an implementation plan; and

**WHEREAS**, some of the City's zoning code is part of the City's coastal implementation plan; and

**WHEREAS**, in light of the Coastal Commission's policy toward visitor-serving lodgings, as well as the historical and existing uses of properties in some parts of the Coastal Zone, the City desires to designate more areas in the Coastal Zone than are currently identified in the STLU ordinances as areas where STLUs are allowed; and

**WHEREAS**, the City has identified additional properties in the Coastal Zone that are appropriate for STLUs due to their location in the Coastal Zone and the historically compatible uses that have been made of these and surrounding properties; and

**WHEREAS**, in addition, in the course of interpreting and enforcing the STLU ordinances, staff identified certain provisions in Title 17 that were not clear from the plain language of the ordinances and need clarification; and

**WHEREAS**, the City desires to clarify the interpretation and application of the STLU ordinances; 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; on the contrary, these amendments implement the LUP; and

**WHEREAS**, the findings that the City made in support of adopting the STLU ordinances support these amendments and are incorporated here by this reference; and

**WHEREAS**, the Planning Commission has reviewed and considered the agenda reports prepared in connection with the STLU ordinances, 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; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, the Planning Commission of the City of San Clemente hereby resolves as follows:

**Section 1.** Incorporation of Recitals.

The Planning Commission hereby specifically finds that all of the facts set forth in the Recitals are true and correct and are hereby incorporated and adopted as findings of the Planning Commission as if fully set forth herein.

**Section 2.** Findings

a. *The proposed amendment is consistent with the General Plan*

The General Plan consistency table in the accompanying staff report details the proposed amendment's consistency with the General Plan and is hereby incorporated by this reference.

b. *The proposed amendment will not adversely affect the public health, safety, or welfare*

In addition to the facts articulated in the recitals to this resolution and the findings to the STLU Ordinance, all of which are incorporated herein by this reference, the Planning Commission also finds that the proposed amendment will not adversely affect the public health, safety, or welfare, in that the proposed amendment achieves the goals of the General Plan as stated in the staff report. Additionally, the proposed amendment ameliorates the negative impacts created by short term lodging uses on traditional neighborhood settings by appropriately restricting short term lodging uses to maintain residential neighborhood compatibility. The proposed amendment also mitigates negative impacts created by non-residential commercial uses in residential zones. The proposed amendment also protects land uses in the coastal zone by ensuring that the STLU Ordinances comply with the requirements of the Coastal Commission. Finally, the proposed amendments protect the public health, safety, and welfare by appropriately balancing residential compatibility concerns with private property rights.

**Section 3.** CEQA

The Planning Commission hereby recommends that the City Council, as the final decision-making authority, find and determine 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. The revisions maintain the status quo for permitting, licensing and regulation of certain STLUs and STARs within the City. Further, the Planning

Commission recommends that the City Council find that 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 4.** Recommendation.

Based on the entire record before the Planning Commission, all written and oral evidence presented to the Planning Commission, and the findings made and evidence discussed in the staff report and this Resolution, the Planning Commission hereby recommends that the City Council adopt an ordinance entitled: "An Ordinance of the City Council of the City of San Clemente Approving an Amendment to Municipal Code Title 17 Regarding Regulation of Short-term Lodging Units," which is attached as Attachment 2 to the accompanying staff report and which is incorporated here by reference.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of San Clemente on April 18, 2018.

  
\_\_\_\_\_  
Chair

**TO WIT:**

I HEREBY CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the Planning Commission of the City of San Clemente on April 18, 2018, and carried by the following roll call vote:

<b>AYES:</b>	<b>COMMISSIONERS:</b>	<b>Brown, Blackwell, Wu, Crandell</b>
<b>NOES:</b>	<b>COMMISSIONERS:</b>	<b>Smith</b>
<b>ABSTAIN:</b>	<b>COMMISSIONERS:</b>	
<b>ABSENT:</b>	<b>COMMISSIONERS:</b>	<b>Talley</b>
<b>RECUSED:</b>	<b>COMMISSIONERS:</b>	<b>Ruehlin</b>

\_\_\_\_\_  
Secretary of the Planning Commission



## AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: November 21, 2017

Agenda Item 64H  
 Approvals:  
 City Manager MM  
 Dept. Head J&D  
 Attorney ES  
 Finance SV

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

**Subject:** INITIATION OF AMENDMENT TO SAN CLEMENTE MUNICIPAL CODE TITLE 17 REGARDING REGULATION OF SHORT-TERM LODGING UNITS; STLU ORDINANCE REVIEW

**Fiscal Impact:** This initiative will have no fiscal impact on the City, except to the extent that it would increase the originally projected inventory of short-term rental units and the associated transient occupancy tax derived from them.

**Summary:** The City's short-term lodging unit ("STLU") ordinance has been in effect since May 2016. Since then, the City has reviewed and applied the ordinance, and determined that some of its zoning provisions warrant clarification and amplification. To correct these provisions, City Council-initiated amendments to the City's Zoning Ordinance are required, subject to recommendation by the Planning Commission. Some of these provisions were challenged in litigation, which would be resolved through amendments proposed in this item.

**Background:** In May 2016, the City Council adopted Ordinances 1622 and 1623 (the "STLU ordinances") to regulate short-term lodgings. The STLU ordinances provided a comprehensive set of operating 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, STLU neighbors, the general public, and City staff. Understanding the unfamiliarity of this type of zoning amendment, not only for the City of San Clemente but for many other jurisdictions across the nation, the City Council requested an update on the STLU ordinances' impact 18 months after adoption.

After using this regulatory platform for over a year, the City has gained experience about the relationship between STLU operating regulations and zoning laws, and has had the opportunity to initiate and prosecute enforcement actions relating to STLUs. Based on this experience and the statistics gathered from the permitting, taxing, and enforcing of STLUs, staff is able to report on the impact of the STLU ordinances. Notwithstanding the recommended modifications to address certain provisions, the STLU ordinances have generally proven effective at improving the City's ability to regulate the operations of STLUs, increasing the City's collection of transient occupancy tax, and establishing successful administrative remedies to enforce against nuisance properties. Prior to the STLU ordinances, the City's ability to enforce against properties operated as short-term rentals was limited to certain nuisance violations. These violations could occur on any property, and did not specifically address issues of incompatibility between long-term residential uses and shorter-term

commercial lodging operations. Since the adoption of the STLU ordinances, the City's ability to address fundamental issues of neighborhood compatibility have increased substantially. Case in point, from 2013 to the adoption of the STLU ordinances, the City received 377 submitted complaints regarding short-term rentals, with a total of 863 cases, mostly based on violations of requirements to pay transient occupancy tax. Since their adoption, the City has received 262 submitted complaints with 136 cases, mostly related to addressing impacts of STLUs that negatively impact neighborhood quality. From these cases, the City has revoked two STLU Operating Licenses from property owners receiving three or more citations related to the operations of a STLU. For additional statistics related to the effects of the STLU ordinances, please refer to Attachment 3.

Also occurring since the adoption of the STLU ordinances, the San Clemente Vacation Rental Alliance (the "Alliance") challenged certain aspects of the STLU ordinances. Among other arguments, the Alliance lawsuit contends that STLU ordinances constituted a "development project" under the California Coastal Act and that as a development project the ordinances required a coastal development permit. The City disagreed with this position. City representatives and representatives of the Alliance met in court-ordered mediated settlement conferences. One central issue in these sessions was the rationale for the ordinances' disparate treatment of STLUs (as compared to traditional housing with the same number of occupants) on Buena Vista in North Beach and on Montalvo. Please refer to the STLU-allowed-area maps included as Exhibit A to the draft ordinance that is included as Attachment 1; see also Attachment 2, a map highlighting the proposed new STLU-allowed areas. The Alliance's view was that these areas were historically oriented toward short-term vacation rentals and would almost certainly be required for inclusion in the STLU overlay if Coastal Commission approval for the ordinances had been sought. In the meantime, the City has actively engaged with the Coastal Commission in discussing these issues in connection with its pending certification of the City's Local Coastal Plan.

The City and the Alliance have reached a negotiated settlement of the active litigation. The settlement requires consideration and passage of certain changes in the STLU ordinances, which staff is recommending for the reasons discussed below. These amendments will allow the STLU ordinances to remain on the books and will require dismissal of the challenge to them.

It should be noted that in February, 2016, when the City initially adopted regulations to address vacation rentals, there were 512 permitted STLUs. Currently, there are 225 registered STLUs. Included in this figure are the eight STLUs and short-term apartment rentals (STARs) that have obtained zoning permits under the new regulations; there are also three STAR Permit applications currently being reviewed through the discretionary process.

**Discussion:**

The settlement agreement requires initiation and adoption of amendments to the City's zoning ordinance in the following areas:

1. *STLU on-street parking.* The STLU ordinances prohibited use of public streets for STLU parking. Enforcement of this prohibition has proven problematic, as it



requires enforcement staff to determine whether STLU occupants and guests are at an STLU for the day or staying overnight. This determination is highly dependent upon what STLU guests say they're doing and evidence that can be subjective and personal (e.g., whether a guest is carrying a casserole or a pillow). The only way to objectively enforce these policies would be through a residency-based permit system, which is extremely difficult to implement in the Coastal Zone. The Alliance has alleged that the STLU ordinances are illegal to the extent they allow all members of the public (and their guests) to park on STLU frontage but prohibit STLU guests from parking on their own frontage or, for that matter, on any other public street.

2. *STAR property manager.* Short-term apartment rentals ("STARs") are multi-family dwelling units where some or all of the units are rented out for short-term, with one of the units being occupied by the owner. These provisions allow a property owner to serve as a STAR manager regardless of the owner's training or qualification as a property manager. Staff recommends that these provisions be amended to allow occupation/operation of a STAR by a qualified, credentialed resident property manager, regardless of whether that on-site manager is the owner of record. This would also satisfy one element of the legal challenge to the STLU ordinances.
3. *Modifications to the STLU overlay.* The City's Zoning Code currently describes the areas of the City where STLUs are allowed by reference to the City's visitor-serving zoning designations, including certain specific lots in the RH zone. Functionally, this description serves as a discrete STLU-allowed overlay on the underlying primary zoning. The STLU lawsuit alleges that the Montalvo/Lobeiro loop and some parcels on Buena Vista immediately adjacent to the existing STLU overlay were improperly excluded from the overlay because their coastal frontage or access also made them important visitor-serving assets. The petitioners argue that imposing new limitations on STLU use in these adjacent areas was an act requiring Coastal Commission approval. In light of the historical use and the claims made by the Alliance, Staff now recommends that the Council initiate a minor expansion of the STLU-allowed areas to include the short stretch of Buena Vista that is at issue;

Also, in practice, Staff has found that a map showing where STLUs are allowed would be more helpful to Staff and to the public than the textual references in the current Code. Consequently, Staff recommends that the Council initiate changes to the Zoning Code to add a new appendix with clear STLU-allowed maps as well as to allow this minor expansion near the previously allowed areas. (See Attachment 1, draft ordinance, and Exhibit A to the same; see also Attachment 2, map highlighting proposed new STLU-allowed areas.) This limited expansion would resolve this major contention in the lawsuit and allow the City and the Coastal Commission to look at the STLU zoning boundaries holistically as part of the LCP process.

4. *Allowances for extended amortization.* The STLU ordinances provided for amortization of non-conforming STLUs. Some owners have taken issue with that amortization period, alleging that it cuts unconstitutionally short their return on

investment. The amortization period for STLUs, in fact, is significantly shorter than the amortization that applies to all other non-conforming uses in the City. Staff recommends that Council initiate an amendment to the code that provides a 30-day "amnesty" for STLU owners in good standing to apply for an extended amortization period conforming to the amortization allowed for other uses that become non-conforming through zoning enactments. This also settles a key dispute in the lawsuit.

The purpose of this item is for the City Council to initiate the necessary amendments to the Zoning Map and Zoning Code to bring to effect these proposed revisions and direct the Planning Commission to review the proposed amendments and provide a recommendation to the Council.

**Environmental Review:**

This action would not, in itself, in any way impact or alter the physical environment. Accordingly, this action is exempt from environmental review under State CEQA Guidelines Section 15061(b)(3), the General Rule Exemption.

**Recommended Action:**

STAFF RECOMMENDS THAT the City Council take the following actions:

Initiate a Zoning Ordinance Amendment to consider the proposed revisions regarding the regulation of short-term lodging units and refer this item to the Planning Commission to provide a recommendation to the Council.

- Attachments:**
1. Proposed amendment to Zoning Code, including Exhibit A, showing proposed STLU-allowed Area maps.
  2. Map highlighting new STLU-allowed areas.
  3. 18-month STLU Ordinance Review Statistics

**Notification:** Not applicable.

# ATTACHMENT 1

## 17.28.292 - Short Term Lodging Units.

\* \* \*

### C. Operating Standards for STLUs . The following operational standards apply to STLUs:

\* \* \*

9. Notice. Each STLU owner shall, upon issuance of any STLU zoning permit or upon any approved change to an existing STLU zoning permit, provide written notice to the Community Development 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.

\* \* \*

14. Occupancy Limit and Parking. The number of renters and guests permitted in each STLU shall be limited based on the number of legal, on-site parking spaces as listed in Table 17.28.292A, Number of Renters Permitted. The number of parking spaces available for an STLU shall include only those parking spaces not required for other on-site uses, such as that required for any guesthouses, second residential dwelling units, the primary dwelling unit if the rental is a STAR, or any other uses that require additional parking. All parking shall be provided on site and any parking spaces used to calculate the maximum number of renters and guests for an STLU, including STARs, shall be maintained so that they are unobstructed and accessible at all times during a short-term rental. Legal parking spaces in front of a garage may be counted if the parking spaces with the garage are not counted.

# ATTACHMENT 1

Table 17.28.292A, Number of Renters Permitted

Number of parking spaces on site	Number of renters and guests permitted
1	4
2	8
3 or more	12

11. Occupancy Limit. The maximum number of renters and guests in an STLU may not exceed the lesser of (1) the occupancy limits specified in this subsection, or (2) two persons per legal bedroom plus two persons, but in no event may the maximum occupancy of any STLU exceed 10 or the maximum allowed under Title 15 of the code, whichever is lower; provided, however, that dwelling units with five or more legal bedrooms may apply to the Community Development Director for a waiver of the 10-person occupancy limit, which the Director may approve, conditionally approve, or deny based on reasonable and objective criteria. The Community Development Director's decision on a waiver of the 10-person occupancy limit is discretionary but shall not be unreasonably withheld. The Director shall establish reasonable and objective criteria, based upon legal bedrooms, for evaluating the 10-person waiver requests and shall submit the criteria to the City Council for adoption by resolution. The criteria may be amended by resolution. The STLU owner shall by written agreement with the renter limit overnight occupancy of the STLU to the maximum number of guests. The number of renters is limited by the number approved in the STLU operating license and STLU zoning permit, whichever is lower.

12. Upon notification that an STLU renter or a renter's guest has violated Subsection 17.28.292(C)(5), Noise and Disorderly Conduct, or 17.28.292(C)(11), Occupancy Limit and Parking, 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.

D. Additional Operational Standard for STARS. In addition to the operating standards for STLUs specified in subsection (C) of this section, the following operating standard applies to STARS: A STAR owner or the owner's trained and qualified property manager must own and operate the STAR and must sleep within a habitable room in a unit on the property every night that some unit in the STAR is rented for short-term lodging purposes. The Director of Community Development shall develop reasonable and appropriate standards for property-manager training and qualification

# ATTACHMENT 1

and shall submit them to the City Council for adoption by resolution. The standards may be amended by resolution.

\* \* \*

## 17.32.030 - Residential Use Regulations.

\* \* \*

**Table 17.32.030 - Residential Zone Uses**

Use	RVL	RL	RML	RM	RH
* * *					
<b>2. Lodging</b>					
STLU 19					○ 20

\* \* \*

<sup>20</sup> STLUs are only permitted on lots 49 through 54 of Block 4 of Tract 821, and Lots 31 through 39 of Block 4 of Tract 821 that are designated for STLUs on the City's current adopted "Short-Term Lodging Units (STLU) Allowed Areas" map in Appendix C of this Title.

\* \* \*

## 17.72.060 - Nonconforming Use Restrictions.

\* \* \*

### G. Nonconforming Residential Uses.

#### 1. STLUs and STARs.

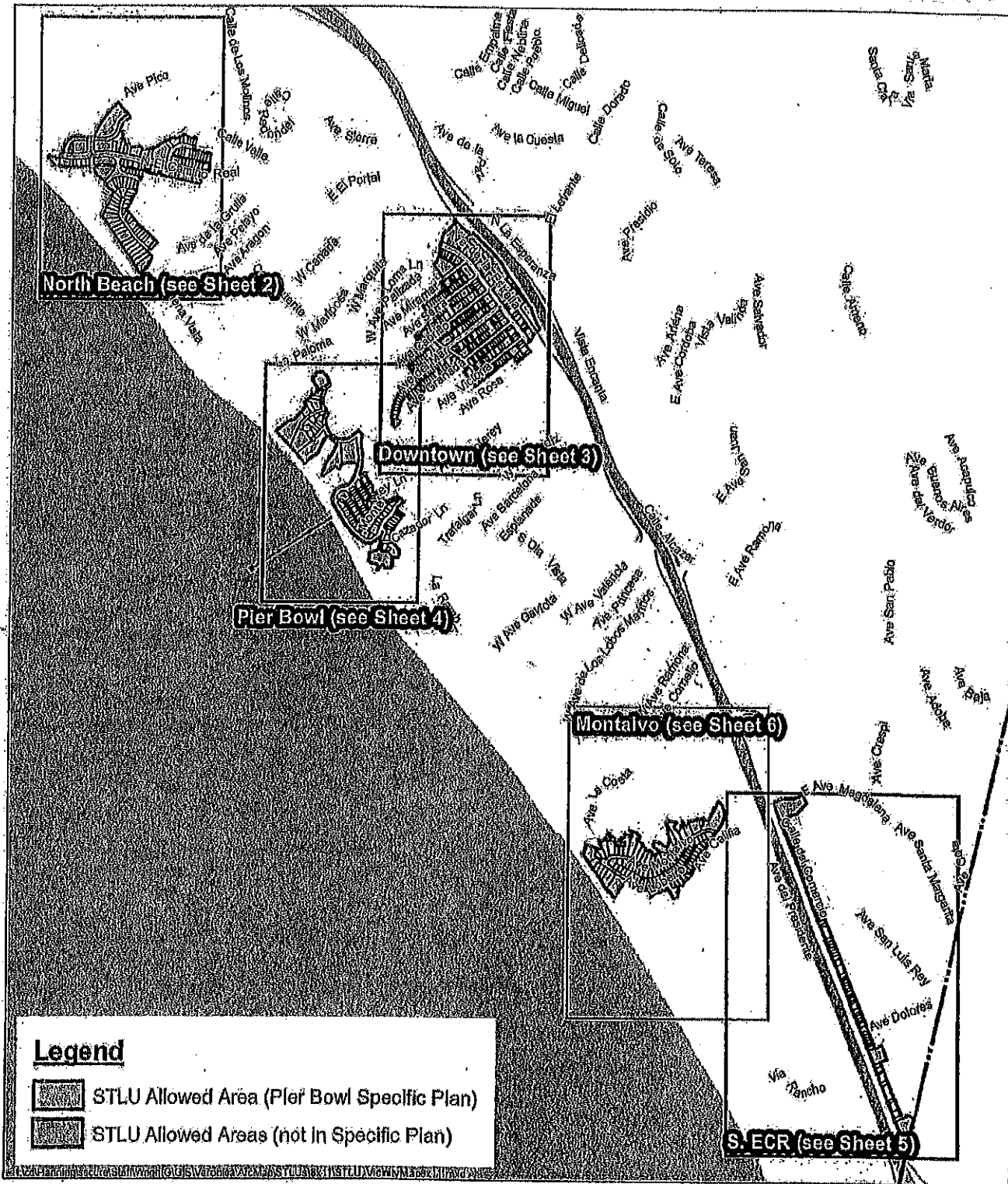
- a. Generally. Any residential use that was legally established and legally operating as of February 2, 2016 (including any legitimate legal and appropriately licensed home occupation and any other legitimate and legal incidental and accessory commercial use) but that is categorized by the provisions of this Title as a Short-term Lodging Unit ("STLU") or Short-term Apartment Rental ("STAR") and does not conform to the development standards of Subsections 17.28.292E, and F, is subject to an amortization period of two years, or until the sale or transfer of the property whichever occurs first, as long as that STLU or STAR is operated according to the operational standards of Subsections 17.28.292(C) and (D) with a valid

# ATTACHMENT 1

STLU operating license under Chapter 3.24 and in accordance with other local, state, and federal law.

- b. Notwithstanding subsection (G)(1)(a) above, an STLU owner in good standing may extend the two-year amortization period to ten years by submitting a complete, written application to extend the amortization period on a form provided by the Director of Community Development within 30 days after the Director makes extension application forms available to the public. The Director's decision on amortization-extension applications is ministerial.
  
- c. An STLU owner that has been granted an amortization extension under subsection (G)(1)(b) above may apply to the Director for one additional five-year extension of the amortization period. The STLU owner must be in good standing with the City to apply for the extension. "In good standing" here means: current on remittance of STLU TOT to the City and with no violation of the City's municipal code, including the TOT ordinance, that was not cured within 30 days of the notice of violation. The Director's decision to approve, conditionally approve, or deny the application for the five-year amortization-extension is discretionary but shall not be unreasonably withheld. The STLU owner shall pay for all City costs directly related to the processing of the application and that otherwise might arise from the application.
  
- d. Any amortization extension granted under subsections (G)(1)(b) or (c) above constitutes a use permit that is specific and personal to the STLU owner and does not run with the land, and it terminates upon any sale or transfer of the STLU property as defined in subsection (G)(3) below.

\* \* \*



# Sheet 1 - Short-Term Lodging Units (STLU) Allowed Areas - Vicinity Map

(DRAFT, adoption date pending)



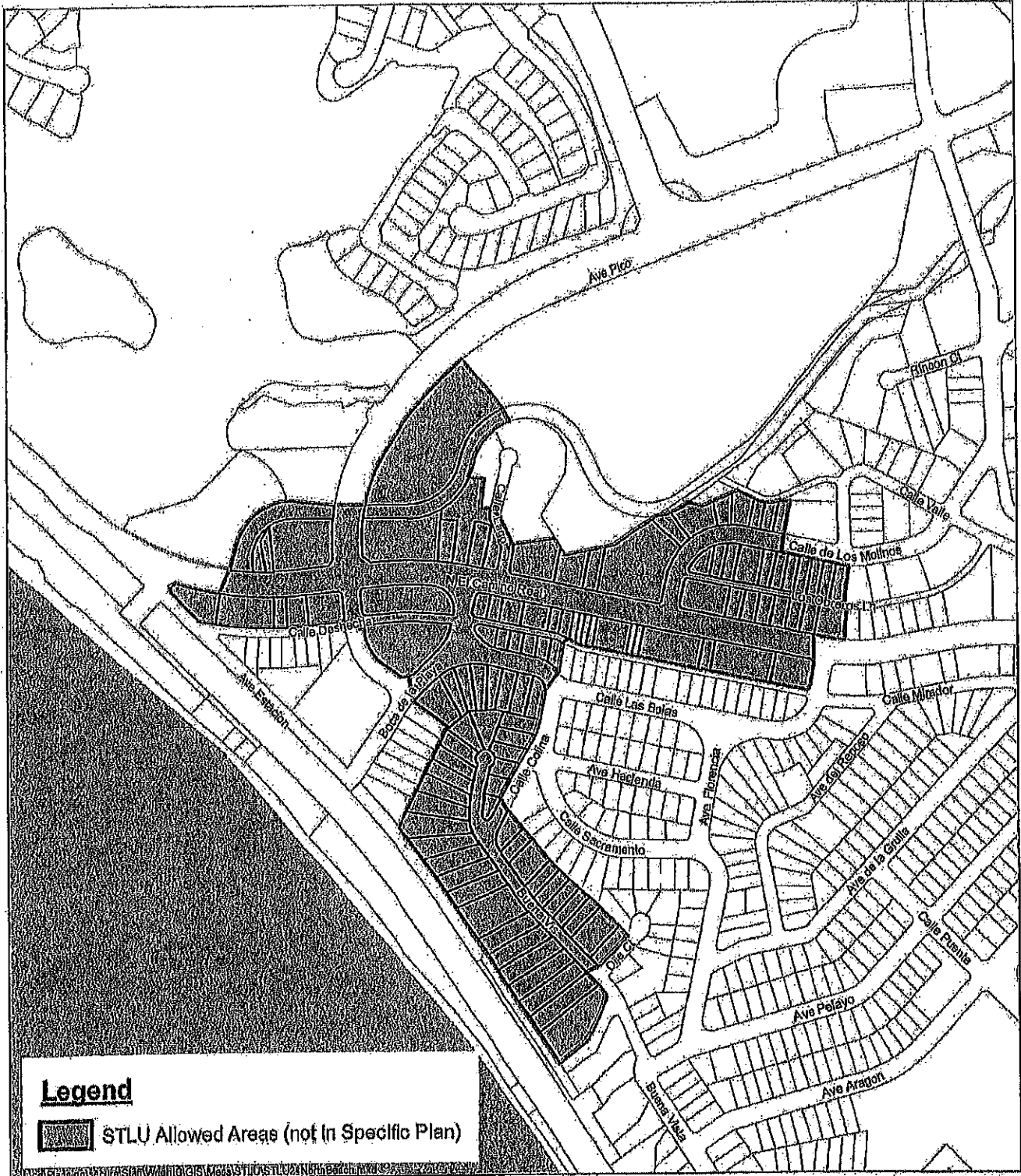
0 550 1,100 2,200  
Feet

11-21-17 / 6H-9

01/20/2017

5-1-18 / 7C-55

EXHIBIT A



**Legend**

 STLU Allowed Areas (not in Specific Plan)



**Sheet 2 - Short-Term Lodging Units (STLU)  
Allowed Areas - North Beach**

(DRAFT, adoption date pending)

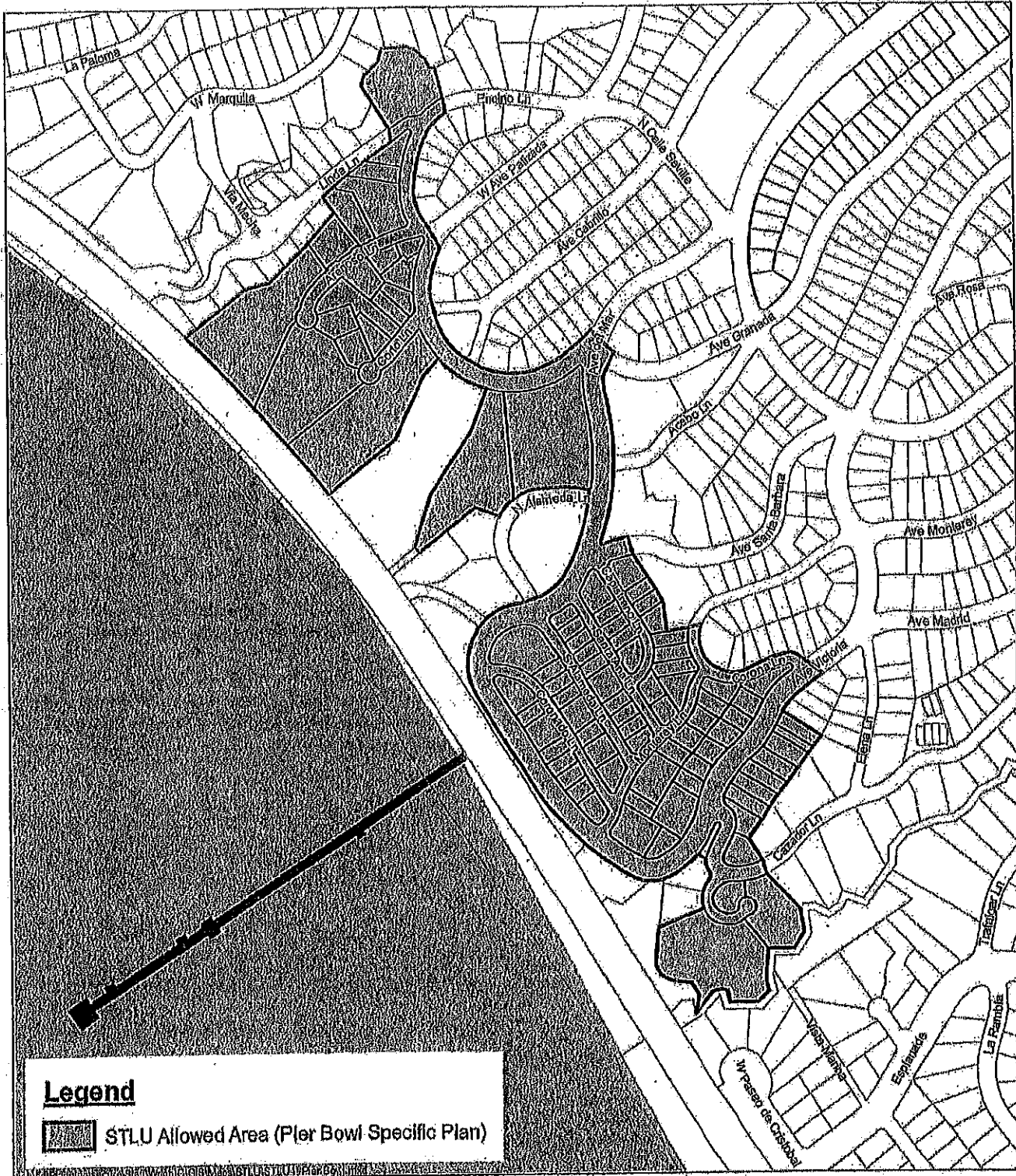


0 140 280 560 Feet  
11-21-17 / 6H-10 02/2017






EXHIBIT A



**Legend**

 STLU Allowed Area (Pier Bowl Specific Plan)

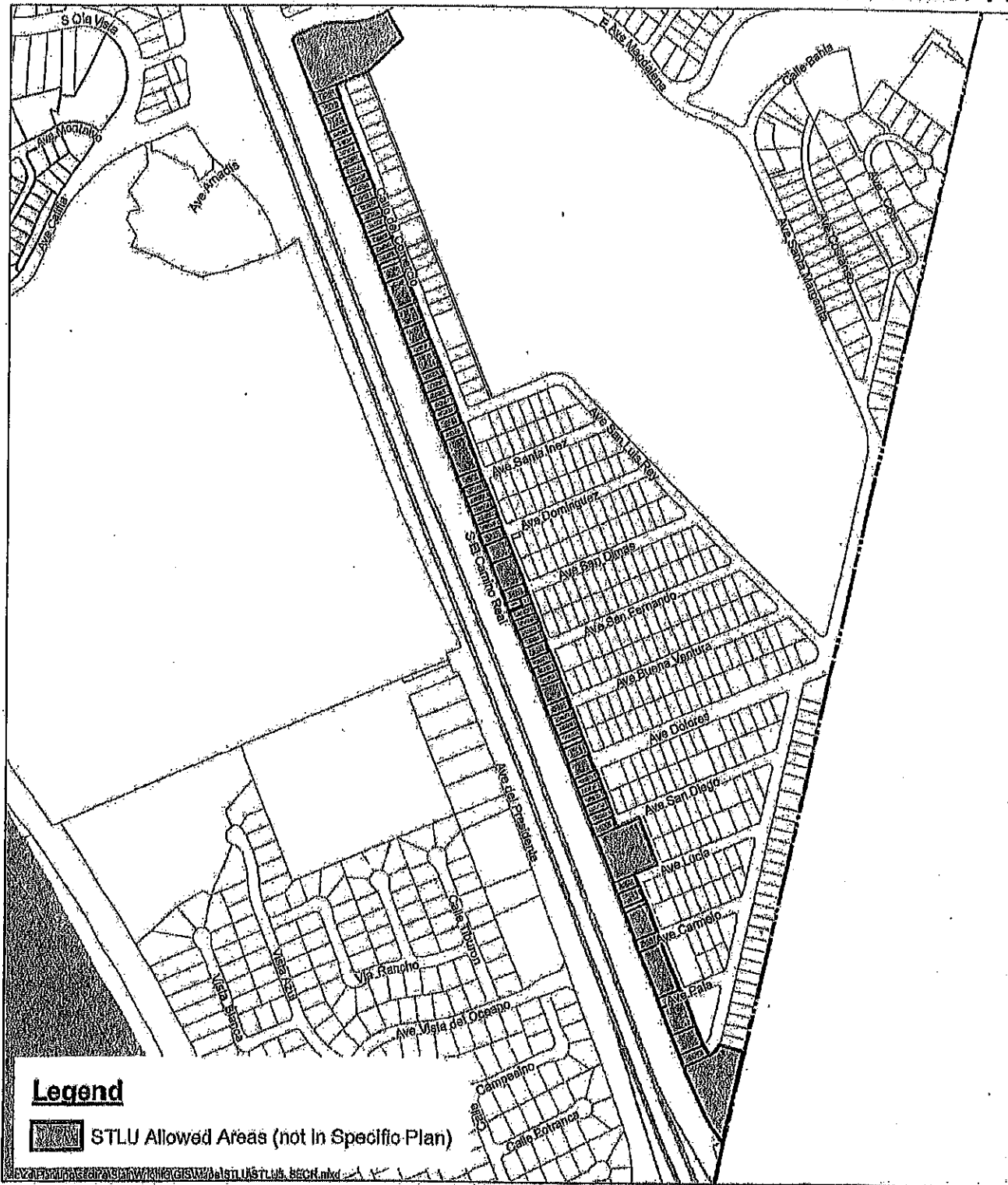


**Sheet 4 - Short-Term Lodging Units (STLU)  
Allowed Areas - Pier Bowl**


(Adopted: May 17, 2016)



0 120 240 480 Feet  
11-21-17 / 6H-12 02/20/2017



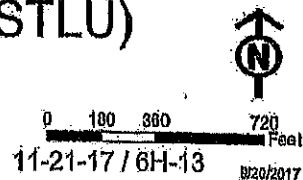
**Legend**

 STLU Allowed Areas (not in Specific Plan)



**Sheet 5 - Short-Term Lodging Units (STLU)  
Allowed Areas - S. ECR**

(Adopted: May 17, 2016)



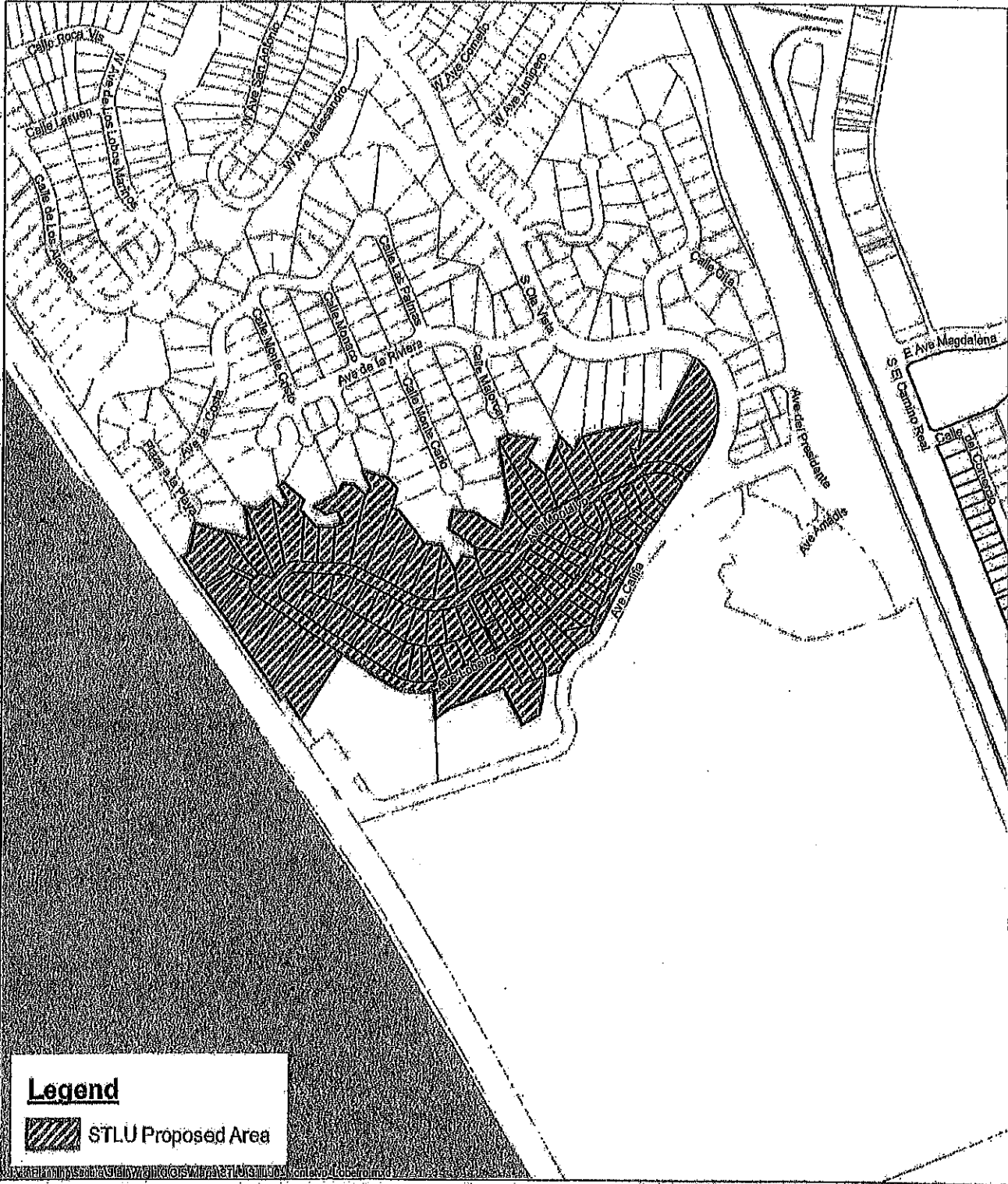
11-21-17/6H-13 11/20/2017

5-1-18/7C-59










**Legend**

 STLU Proposed Area



**Short-Term Lodging Units (STLU)  
Allowed Areas - Montalvo/Lobeiro**  
(DRAFT, adoption date pending)

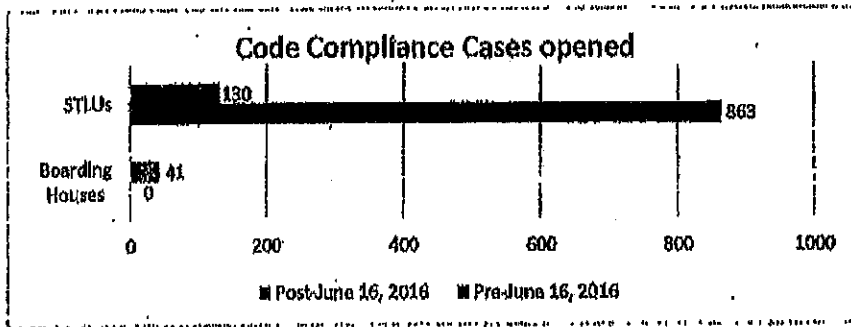
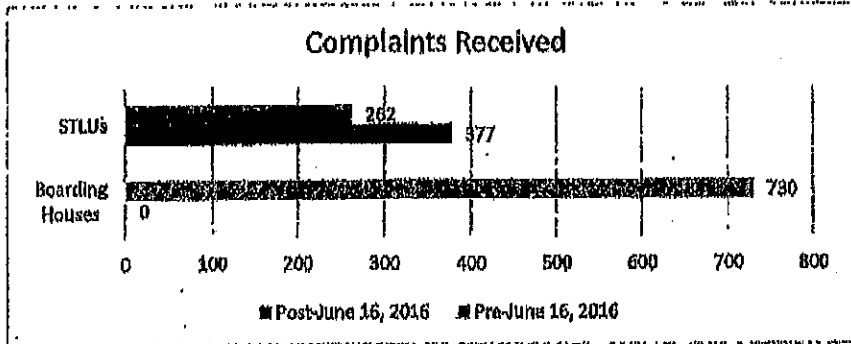


0 165 310 620 Feet  
11-21-17 / 6H-17 10/17/2017

5-1-18 / 7C-63

# ATTACHMENT 3

## Ordinance 1622 and 1623 Enforcement Analysis



STLU	
Calls/Complaints	262
Cases	136
Notices of Correction	58
Citations:	
Parking	16
Occupancy/ Loud Disturbance	10
Trash	16
Mgt.-Related Issues	10
Land Use/ Zoning	25
<b>Total Citations</b>	<b>56</b>

Boarding House	
Calls/Complaints	730
Cases	41
Notices of Correction	40
Citations:	
Trash	9
Land Use	37
<b>Total Citations</b>	<b>43</b>