

**ORDINANCE NO. \_\_\_\_\_****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, MAKING CEQA FINDINGS AND FOR A CITY-INITIATED AMENDMENT (ZA 18-090) OF THE CITY OF SAN CLEMENTE MUNICIPAL CODE SECTION 17.28.300 FOR TEMPORARY FENCING.**

WHEREAS, on February 4, 2014, the City Council of the City of San Clemente adopted the Centennial General Plan, which, among other provisions, included changes to land use designations, particular uses and development criteria for certain designations;

WHEREAS, as part of its consideration and action on the Centennial General Plan, the City Council made Environmental Impact Report Findings including a Statement of Overriding Considerations, certified Environmental Impact Report SCH No. 2013041021 ("Final EIR") , and approved mitigation monitoring measures pursuant to the California Environmental Quality Act ("CEQA");

WHEREAS, on November 3, 2015 the City Council introduced Ordinance No's. 1609 and 1610, for Phase 1 amendments to the Zoning Map and Zoning Amendment 14-456 regarding areas comprising the various categories of Mixed Use and Commercial land use designations, as well as changes to the particular uses and development criteria for certain categories of those designations, as well as clarifying particular provisions of the Land Use Element at Table LU-1, and amending the Centennial General Plan Map reflecting the foregoing amendments and clarifications and a number of technical mapping edits;

WHEREAS, as part of its consideration and action on the Centennial General Plan amendments and Zoning Ordinance amendments of November 3, 2015, the City Council approved an addendum to Final EIR ("2015 Addendum") pursuant to the CEQA;

WHEREAS, on November 17, 2015, the City Council adopted Ordinance No's. 1609 and 1610, Phase 1 containing amendments to the Zoning Map of the City of San Clemente and to amend the San Clemente Municipal Code Title 17, hereinafter referred to as Zoning Amendments 14-456, in order to implement and achieve consistency with the Centennial General Plan and the Zoning Map and the amended Title 17 Chapters and Sections;

WHEREAS, the City Council approved the 2016-2017 Strategic Implementation Plan (SIP) for the Centennial General Plan that set priorities including amendments to the Centennial General Plan the Zoning Code (San Clemente Municipal Code Title 17 "Zoning") and Specific Plans that make development standards, land uses, maps, regulations, and other related contents, internally consistent with the Centennial General Plan by cleaning up errors, making clarifications, and correcting inconsistencies;

WHEREAS, on October 17, 2017, the City Council initiated a Zoning Amendment for consistency with the Housing Element Action Plan. The plan included future amendments for Density Bonus, Residential Care Facilities, Transitional and Supportive Housing, and Farmworker and Employee Housing;

WHEREAS, on January 17, 2018, the Planning Commission held a study session for Phase 2, Comprehensive Zoning Code Update and set a public hearing for February 21, 2018;

WHEREAS, on February 21, 2018, the Planning Commission of the City of San Clemente held a duly noticed public hearing on amendments to San Clemente Municipal Code Title 17 hereinafter referred to as Zoning Amendment 17-412, and considered evidence presented by City staff and other interested parties and made a recommendation to the City Council as fully set forth in Resolution No. PC 18-004 relating to Zoning Amendment 17-412;

WHEREAS, on March 21, 2018, the Planning Commission held a duly noticed public hearing on amendments to San Clemente Municipal Code Title 17 Section 17.28.300 as it relates to temporary fencing hereinafter referred to as Zoning Amendment 18-090, and considered evidence presented by City staff and other interested parties and made a recommendation to the City Council as fully set forth in Resolution No. PC 18-007 relating to Zoning Amendment 18-090;

WHEREAS, on May 1, 2018, the City Council held a duly noticed public hearing on the subject recommendation, and considered evidence presented by City staff, and other interested parties and the recommendation of the Planning Commission; and

WHEREAS, the Planning Division completed an initial environmental assessment for the project in accordance with the CEQA and determined that, the project be considered without further review under the CEQA. The proposed ordinance is a mandatory action under Government Code section 65860 that the City must take to bring the Zoning Code into conformance with the Centennial General Plan. The environmental impacts of the Centennial General Plan were fully disclosed, evaluated, and mitigated, to the extent feasible, in the Final Environmental Impact Report (EIR), State Clearinghouse No. 2013041021, certified for the Centennial General Plan on February 13, 2014, and in the 2015 Addendum to the same. In accordance with State CEQA Guidelines Sections 15162 and 15168, no additional environmental review is necessary to adopt ZA 18-090 because the EIR and Addendum adequately describe the project; and

NOW, THEREFORE, the City Council of the City of San Clemente hereby ordains as follows:

**Section 1:** CEQA Findings.

Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented on this ordinance regarding temporary fencing, and the facts outlined below, the City Council hereby finds and determines that:

1. No additional environmental review, beyond that contained in the Final EIR and the 2015 Addendum, are necessary for the City Council to adopt the temporary fencing ordinance. (State CEQA Guidelines, §§ 15168, 15162.) The ordinance is a mandatory action under Government Code section 65860 that the City must take to bring the Zoning Code into conformance with the Centennial General Plan. The environmental impacts of the Centennial General Plan were fully disclosed, evaluated, and mitigated, to the extent feasible, in the Final EIR and the 2015 Addendum.
2. This ordinance would not have effects that were not examined in the Final EIR and the 2015 Addendum. All of the changes proposed as part of the temporary fencing ordinance are changes to make the zoning code conform to the land use, circulation, and other policy changes in the approved Centennial General Plan. No changes to the Zoning Code are proposed beyond those necessary to make the Zoning Code conform to the existing General Plan.
3. The preparation of a subsequent or supplemental EIR pursuant to State CEQA Guidelines, section 15162 is not required for the temporary fencing ordinance because the Comprehensive Zoning Code Update is a subsequent mandatory action that the City Council would have to take and that was contemplated at the time that the Centennial General Plan was certified, and the 2015 Addendum approved. The Comprehensive Zoning Code Update: (1) does not constitute a substantial change to the Centennial General Plan that will require major revisions of the Final EIR or the 2015 Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (2) does not constitute a substantial change with respect to the circumstances under which the Centennial General Plan is undertaken that will require major revisions of the Final EIR or 2015 Addendum due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and (3) does not contain new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the Final EIR was certified and the 2015 Addendum approved, that shows any of the following: (a) the Centennial General Plan will have one or more significant effects not discussed in the Final EIR and Addendum; (b) significant effects previously examined will be substantially more severe than shown in the Final EIR and 2015 Addendum; (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the Centennial General Plan, but the lead agency declined to adopt such measures or alternatives; or (d) mitigation measures or alternatives considerably different from those analyzed in the Final EIR and 2015 Addendum would substantially reduce one or more significant effects on the environment, but the lead agency declined

to adopt such mitigation measures or alternatives.

4. All of the mitigation measures in the Mitigation Monitoring and Reporting Program adopted in connection with the Final EIR shall be incorporated as feasible mitigation measures for this temporary fencing ordinance.
5. The findings that were adopted in connection with the Final EIR and the 2015 Addendum shall be incorporated by reference into the City Council's findings for the proposed ordinance.
6. City staff shall prepare, execute, file and record with the Orange County Clerk a Notice of Determination within five (5) working days after the City Council conducts first reading of the proposed Zoning Ordinance (ZA 18-090), as well as a second Notice of Determination within five (5) working days after second reading of the proposed Zoning Ordinance (ZA 18-090).
7. The Final EIR, 2015 Addendum and all other documents and materials that constitute the record of proceedings on which these findings have been based are located at the City of San Clemente, Community Development Department, 910 Calle Negocio, #100, San Clemente, CA 92673. The custodian of records is the Community Development Director.

**Section 2:** The following findings are made regarding the amendments to the Zoning Ordinance, as set forth in Section 3, Section 4, Section 5 and Section 6 herein:

- A. The proposed amendments are consistent with the General Plan pursuant to Government Code Section 65860(c), since they are direct implementation of the Centennial General Plan (as adopted on February 14, 2014 and subsequent amendments thereto adopted on November 3, 2015). Specifically, General Plan Policy UD-3.08. Transitional Areas that states: "We require development in transitional areas, where one type of land use (e.g., industrial) transitions to another (e.g., residential) to protect residents' quality of life through such measures as landscaping, high-quality walls or fencing, or setbacks."
- B. The zoning amendments adopting the use provisions and development criteria as proposed will not adversely impact the public health, safety, and welfare since they further the Centennial General Plan objectives of (1) meeting community values, needs and conditions; (2) guiding long-term public and private land use, transportation, economic development, resource preservation, urban design and other public policy actions; and (3) reflecting the City Council's review, direction and independent judgement regarding land use, circulation and transportation, economic development, environmental protection, recreation, public safety and services, coastal issues, historic preservation, natural resources, urban design, and governance and growth management policies.

**Section 3:** San Clemente Municipal Code Zoning Map is hereby amended to reflect the changes of the zones applied to particular parcels described in the attached Exhibit A and incorporated herein.

**Section 4:** San Clemente Municipal Code, Title 17, Section 17.28.300 is hereby amended to read in its entirety as set forth and incorporated herein, such amendments being generally described as follows:

**Section 17.28.300(E) is amended as follows:**

- E. ~~Temporary Construction Offices, Security Quarters, Storage Yards and Large Containers for Construction Projects~~ Uses and Structures. Construction offices, security quarters, storage yards, and large containers, temporary fencing and similar structures on the site of an active construction project shall be conditionally permitted, subject to the following regulations:
1. Expiration of Permits. Any permit issued pursuant to this section in conjunction with a construction project shall become invalid upon cancellation or completion of the Building Permit for which the use has been approved, or the expiration of the time for which the approval has been granted.
  2. Review Requirements. Construction offices, security quarters, storage yards, and large containers, temporary fencing and similar structures on the site of an active construction project shall require the approval of Temporary Uses Permit in accordance with Section 17.16.150, Temporary Use Permits, of this title.

**Section 17.28.300(I) is added as follows:**

- I. **Other Temporary Fencing for Security and Screening.** Temporary fencing, other than what is required for active construction projects, is allowed for the purpose of providing security and screening to ensure the health, safety and welfare of the community at the discretion of the City Planner, subject to the following regulations.
1. Review Requirements. Temporary fencing and similar structures erected higher than 42 inches and up to 6 feet in height shall require the approval of a Minor Architectural Permit/Minor Cultural Heritage Permit in accordance with Section 17.16.100, Architectural Permits/Cultural Heritage Permits and Minor Architectural Permits/Minor Cultural Heritage Permits.
  2. Expiration of Permits. Any permit issued pursuant to this section shall become invalid upon the expiration of an approved permit for which the use has been approved.
  3. Minimum Standards. Temporary fencing and similar structures shall not be chainlink. Acceptable materials are more permanent in nature and include wrought iron, wood, or similar material and must be compatible with the existing style of surrounding development. Temporary fences and similar structures shall

be maintained in good condition with no unintentional rips/tears (except for minimization of wind effects), fading, or general disrepair. Maintenance shall not become so defective, unsightly, or in such condition of deterioration or disrepair to create a public nuisance as set forth in Section 5.82.030.

**Section 5:** If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid or unenforceable, such decision shall not affect the validity or enforceability of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases would be declared invalid or unenforceable.

**Section 6:** The City Clerk shall certify to the passage of this Ordinance and publish the same in the manner required by law, and this Ordinance shall take effect as provided by law.

APPROVED, ADOPTED AND SIGNED this 15<sup>th</sup> day of May, 2018.

ATTEST:

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City Clerk of the City of  
San Clemente, California

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Mayor of the City of San  
Clemente, California

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

I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. \_\_\_\_\_ having been regularly introduced at the meeting of May 1, 2018, 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 15<sup>th</sup> day of May, 2018, 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 15<sup>th</sup> day of May, 2018.

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CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM:

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CITY ATTORNEY