

# CITY OF SAN CLEMENTE

## City Council Minutes

### Special and Adjourned Regular City Council Meeting – May 9, 2018

*These minutes reflect the order in which items appeared on the meeting agenda and do not necessarily reflect the order in which items were actually considered.*

A Special Meeting of the San Clemente City Council was called to order on May 9, 2018 at 3:30 p.m. in the Council Chambers, located at 100 Avenida Presidio, San Clemente, California, by Mayor Pro Tem Hamm.

**PRESENT** SWARTZ, WARD, MAYOR PRO TEM HAMM

**ABSENT** DONCHAK, MAYOR BROWN

**STAFF PRESENT** Erik Sund, Assistant City Manager; Scott Smith, City Attorney; Joanne Baade, City Clerk; Laura Campagnolo, Deputy City Clerk

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### **CLOSED SESSION (SPECIAL MEETING) - 3:30 P.M.**

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 3-0 (COUNCILMEMBER DONCHAK AND MAYOR BROWN ABSENT), to recess to Closed Session to discuss the following:

- A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION  
Existing litigation pursuant to Government Code section 54956.9(d)(1)  
Number of Cases: 1

Case Name: San Clemente Vacation Rental Alliance v. City of San Clemente  
Case Number: OCSC 30-2016-00858999-CU-WM-CJC

### **BUSINESS MEETING (ADJOURNED REGULAR MEETING) - 4:00 P.M.**

The Adjourned Regular City Council Meeting of May 9, 2018 convened at 4:09 p.m., with all members present, except Councilmember Donchak and Mayor Brown.

### **PLEDGE OF ALLEGIANCE**

Councilmember Swartz led the Pledge of Allegiance.

1. **SPECIAL PRESENTATIONS**

None.

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

**Transient Issues/Fire Risk**

Anthony LaFrano, San Clemente, cited problems associated with homeless persons and voiced concern that homeless encampments on Avenida Pico pose a fire risk.

3. MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 3-0 (COUNCILMEMBER DONCHAK AND MAYOR BROWN ABSENT), to waive reading in full of all Resolutions and Ordinances.

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

None.

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

None.

6. **CONSENT CALENDAR**

The Planning Commission Regular Meeting minutes of April 18, 2018 were removed from the Consent Calendar for discussion.

A(1). **Planning Commission Regular Meeting Minutes of April 18, 2018**

Jim Ruehlin, San Clemente, stated he is a Planning Commissioner, but is speaking as a private citizen; stated that he recused himself from participation on Item 8-C of the Planning Commission meeting of April 18, 2018 which related to STLU Zoning Amendment 17-392; urged Council to reject the portion of the Planning Commission minutes of April 18, 2018 relating to ZA 17-392 because the Planning Commission based its recommendation on incorrect facts; summarized the information that he felt was erroneous and urged that Council refer the matter back to the Planning Commission for reconsideration.

Diane Stiefel, San Clemente, referred to the portion of the Planning Commission minutes of April 18, 2018 relating to Item 8-A (Rasta Child Care - CUP 17-390, 3 Paseo Vista); spoke in opposition to the proposed child care operation due to her belief that it will create traffic and parking problems and jeopardize child safety; asserted the minutes are incomplete in that they do not include all commentary.

Jurgen Stiefel, San Clemente, voiced concern with the portion of the Planning Commission minutes of April 18, 2018 relating to the Rasta Child Care project because they indicate that HOA Board members were not represented, even though the Board's legal counsel communicated with the City three times in writing; pointed out that persons traveling to the child care facility will need to drive through his high-density neighborhood.

Community Development Director Gallardo-Daly advised that the Rasta Child Care CUP has been appealed and will be considered by Council at its June 12, 2018 meeting.

Council considered the possibility of calling up Item 8-B (JD's Indoor Entertainment - 215 S. El Camino Real, CUP 18-056) for review, but the Council majority ultimately decided against calling up the project.

MOTION BY COUNCILMEMBER WARD, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBER DONCHAK AND MAYOR BROWN ABSENT), to receive and file the Planning Commission Regular Meeting minutes of April 18, 2018.

## 7. PUBLIC HEARINGS

### A. Code Amendment - Regulation of Short-Term Lodging Units (STLU) Zoning Ordinance Amendment 17-392

Continued Public Hearing to consider a City-initiated amendment of San Clemente Municipal Code Title 17, the Zoning Ordinance, (Zoning Amendment 17-392) regarding regulation of Short-Term Lodging Units (STLUs). The City Council will be considering changes to the existing STLU regulations including, but not limited to, the expansion of the STLU overlay area, existing development standard requirements and operating procedures. On April 18, 2018 the Planning Commission voted (4-1) to concur with Staff and recommend approval of the proposed amendment to the City Council.

Senior Planner Stiehl narrated a PowerPoint presentation entitled "Item 7A - STLU Zoning Amendment ZA 17-392 - May 9, 2018", and responded to Council inquiries. A hard copy of Senior Planner Stiehl's PowerPoint is on file with the City Clerk.

Mayor Pro Tem Hamm opened the Public Hearing.

Robert Peters, San Clemente, stated that residents of his complex on Ola Vista were not included in STLU discussions; stated that noise travels from floor to floor in his complex and pointed out that the buildings were not designed to function as hotels; cited safety issues associated with transient visitors.

Kim Robinson, San Clemente, urged that her Buena Vista property be added to the STLU allowed area; opined that short-term renters are less problematic than long-term renters.

Clayton Robinson, San Clemente, urged Council to add Buena Vista to the STLU allowed area; noted that the majority of the properties on Buena Vista are condos, apartments and rental homes; spoke in support of City-controlled STLUs.

Bill Osier, San Clemente, opined that the STLU proposal is contrary to the General Plan's objectives to enhance residential neighborhoods and promote quality of life; stated that the disturbances caused by commercial lodging areas are a threat to public health, safety, welfare and quiet enjoyment of property.

Hugh Limebrook, San Clemente, asserted that short-term renters cause more problems than long-term renters; voiced concern that STLUs will exacerbate the parking problem in the Montalvo/Lobeiro loop; distributed photographs which are on file with the City Clerk.

Robert Lacy, San Clemente, distributed an article entitled "What Airbnb Did to New York City", a copy of which is on file with the City Clerk; opined that STLUs cause permanent residents to relocate; urged Council to adopt an STLU ordinance that applies to the entire City, as opposed to specific neighborhoods.

Chad Engelking, San Clemente, suggested that the proposal disproportionately affects medium-density properties, while protecting single-family homes.

Tina Tharatt, El Dorado Hills, stated that she inherited her father's house in San Clemente and rents the property on a short-term basis so that she can use the property a couple times a year; voiced concern that she was notified

that she is not eligible for an 8-year amortization because her property is zoned Residential Low, but noted that nine non-conforming Residential Low properties are being exempted from the Ordinance change as part of the settlement.

James Cassano, San Clemente, urged that his property at the corner of Victoria and Elena be added to the STLU allowed area, noting that the current map excludes the last five lots in the 400 block of Victoria; distributed hard copies of his PowerPoint presentation entitled "STLU Allowed Areas - Pier Bowl", which is on file with the City Clerk.

K.K. Ciruli, San Clemente, questioned whether the process leading to the settlement agreement was adequate and fair and whether citizens were involved to mitigate the negative aspects of the settlement; stated that the Montalvo/Lobeiro loop is an established neighborhood and not an area historically oriented toward short-term lodging units.

Sandy Beeler, San Clemente, stated she owns a triplex on Avenida Lobeiro; conveyed that internet-based vacation rental services represent a global shift in the way people travel, adding that the change is permanent and needs to be addressed at this time; suggested potential STLU and STAR (Short-Term Apartment Rental) restrictions to reduce negative impacts; opined that the entire City should be open to vacation rentals.

Catherine Osier, San Clemente, voiced concern that the settlement agreement was reached without input from impacted persons; cited concerns that STLUs would impact parking and create noise within the Lobeiro/Montalvo loop.

Judy Rowe, San Clemente, suggested that the proposal will affect her quality of life in the Lobeiro/Montalvo loop; cited anticipated problems, including diminished safety; urged that Council reject the proposal in question and involve citizens in the creation of an alternative plan that is fair and equitable for everyone.

Jim Dahl, San Clemente, voiced concern that the settlement agreement and resulting ordinance were developed without citizen input; suggested that the Lobeiro/Montalvo loop and Buena Vista areas were singled out as concessions to the San Clemente Vacation Rental Alliance; reviewed the parking shortage in the Lobeiro/Montalvo loop.

Rick Rowe, San Clemente, narrated a PowerPoint entitled "Loop Fact Sheet", which is on file with the City Clerk; opined that the ordinance in question is fatally flawed and will transform the Lobeiro/Montalvo loop from a residential area into a resort; noted that the Lobeiro/Montalvo loop is high density with a parking shortage.

Susan Corman, San Clemente, stated she owns a multi-family dwelling on the 200 block of Avenida Cabrillo; urged that Council allow her to continue to operate her STLUs.

Jennifer Harris, San Clemente, voiced support for the proposal to extend the STLU allowed area, noting that she owns a vacation rental on Avenida Monterey and has never experienced a problem.

Olga Reznik, San Clemente, stated that her low density property was unfairly excluded from the 8-year amortization provision; stated that her neighbors complained when her property was rented for extended periods, but have not complained since she started renting on a short-term basis; pointed out that her STLU is not rented every day.

Beth Dudas, San Clemente, voiced concern that STLU owners that follow the rules are being hurt; stated that she has owned her STLU for 16 years and has never encountered a problem; urged that Council consider financial hardship cases and contemplate limiting the number of weeks that properties can be rented per year.

Steve Sargent, Lake Forest, stated that he purchased a home with the intent to rent it out until he retires; stated that his STLU experience has been positive; noted the economic benefit that vacationers bring to the City as well as the benefits of TOT taxes.

Jim Ruehlin, San Clemente, stated that he is a Planning Commissioner, but is speaking on behalf of himself; advised that he is a 19-year resident of Buena Vista; described the neighborhood quality of the Buena Vista area and suggested that every unit that is converted to a short-term rental diminishes the neighborhood environment; asserted that calculation flaws exist in the Administrative Report and suggested that mitigations need to be considered.

Amber Shikli, San Clemente, stated that her family's STLU is needed to pay her school tuition.

Tiffany Cassano, San Clemente, stated that her mother-in-law needs her STLU for retirement, but the property has been excluded from the STLU allowed area.

Wayne Eggleston, San Clemente, asserted that the settlement process was flawed and voiced concern that no residents were involved; stressed that residents come first.

Edith Radnoti, San Clemente, stated that she will be forced to sell her family home if the Ordinance is not adopted; suggested that the Ordinance is a good compromise.

Dan Bane, San Clemente, stated that City Codes relating to STLUs and sober living homes are combined and questioned whether sober living homes will ask for exemptions if the STLU exemptions are allowed; urged that Council defer the issue to allow further study to ensure the City is not opening the door to future challenges.

Joe Janis, San Clemente, suggested that members of the San Clemente Vacation Rental Alliance have special interest in the Buena Vista and Lobeiro/Montalvo loop areas.

Brad Den Dulk, San Clemente, spoke on the economic benefits of STLUs; stated that the few STLUs that caused problems have been eliminated; asserted that STLUs do not cause noise and parking problems.

Tricia Mading, San Clemente, voiced concern with the amortization clause in the revised Ordinance, noting that owners' expectations at the time they purchased their properties are irrelevant since those expectations may have been unreasonable; stated that courts consider the health, welfare and safety impacts that non-conforming uses cause for neighbors and opined that such a notation should be included in the Ordinance.

Ed De Varona, San Clemente, opined that retroactive zoning constitutes a "taking"; stated that he owns an STLU to help with his children's future education and ability to stay in the area; opined that behavior should be regulated, as opposed to regulating status that is determined by the length of time a person rents a property; conveyed support for the proposed Ordinance.

David Freedman, San Clemente, identified nuisances associated with STLUs and pointed out that STLUs violate his property's CC&Rs.

There being no others desiring to speak to this issue, the Public Hearing was closed.

**MEETING RECESSED/RECONVENED**

Council recessed at 6:00 p.m. and reconvened at 6:06 p.m., with all members present, except Councilmember Donchak and Mayor Brown.

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 3-0 (COUNCILMEMBER DONCHAK AND MAYOR BROWN ABSENT), to recess the City Council meeting for three minutes to enable the Public Safety Task Force (PSTF) meeting, that was scheduled to begin in the Council Chambers at 6:00 p.m., to convene for a public announcement that the PSTF meeting is being postponed to 6:45 p.m.

### **MEETING RECESSED/RECONVENED**

Council recessed at 6:07 p.m. and reconvened at 6:10 p.m., with all members present, except Councilmember Donchak and Mayor Brown.

Following deliberations, MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBER DONCHAK AND MAYOR BROWN ABSENT), to:

1. Introduce Ordinance No. 1654 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, with the following modifications:
  - A. The following language shall be added as new Section 14 (with subsequent Sections being renumbered accordingly):

"Section 14. SCMC section 17.28.292, subsection (F), is amended to read in its entirety as follows:

"F. Additional Development Standards for STARs. In addition to the development standards for STLUs specified in Subsection E of this section, the following development standard applies to STARs: A STAR must be located at least 300 feet from every other STAR or STLU."
  - B. Exhibit A to Ordinance No. 1654 (Short-Term Lodging Units (STLU) Allowed Areas Maps), shall be modified to reflect Buena Vista and North Beach as separate areas.
2. Direct Staff to work with property management companies relative to enforcing occupancy levels. The possibility of property managers responding to potential violation situations together with Code Enforcement staff is to be addressed. Code Enforcement is encouraged to return to full staffing as soon as possible.
3. Staff is to consider alternative options for parking permits and parking solutions for short-term rentals.



**8. UNFINISHED BUSINESS**

None.

**9. NEW BUSINESS****A. Code Amendment - Regulation of Short-Term Lodging Units (Chapters 1.20 (Administrative Fines), 3.24 (Transient Occupancy Tax), and a Cross-Reference to Chapter 8.28 in Subsection 17.28.292(E)(3) (Solid Waste Collection)**

Report from the City Attorney concerning possible amendments to the Code of the City of San Clemente regarding regulation of short-term lodging units (i.e., Chapters 1.20 (Administrative Fines), 3.24 (Transient Occupancy Tax), and a cross-reference to Chapter 8.28 in Subsection 17.28.292(E)(3) (Solid Waste Collection).

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER WARD, CARRIED 3-0 (COUNCILMEMBER DONCHAK AND MAYOR BROWN ABSENT), to introduce Ordinance No. 1656 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MUNICIPAL CODE CHAPTERS 1.20 (ADMINISTRATIVE FINES), 3.24 (TRANSIENT OCCUPANCY TAX), AND A CROSS-REFERENCE TO CHAPTER 8.28 IN SUBSECTION 17.28.292(E)(3) (SOLID WASTE MANAGEMENT) REGARDING REGULATION OF SHORT-TERM LODGING UNITS, with modifications as follows:

1. References to "accessory dwelling units" are to be omitted throughout the Ordinance where such references are incorrectly included.
2. Page 2 of the Ordinance, under Section 3, 1.20.050 Section A was amended to read in its entirety as follows:

"Applicability of this section. This section 1.20.050 applies exclusively to building code and zoning violations that do not create an immediate danger to health or safety and that cannot reasonably be cured immediately (hereinafter "correction condition")."

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

None.

11. **REPORTS**

A. **Commissions and Committees**

None.

B. **City Manager**

None.

C. **City Attorney**

None.

D. **Council Members**

**Bee Keeping**

Councilmember Ward requested that Staff query other cities relative to their requirements for bee keeping.

12. **RESOLUTIONS/ORDINANCES**

None.

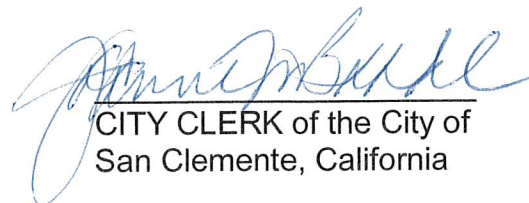
13. **ADJOURNMENT**

MOTION BY MAYOR PRO TEM HAMM, SECOND BY COUNCILMEMBER SWARTZ, CARRIED 3-0 (COUNCILMEMBER DONCHAK AND MAYOR BROWN ABSENT), to adjourn at 6:45 p.m. to a Joint Council/Commissions/Committees meeting to be held on May 10, 2018 at 7:00 p.m. at the Ole Hanson Beach Club, located at 105 W. Avenida Pico, San Clemente, California.

The next Regular Council Meeting will be held on May 15, 2018 in the Council Chambers, located at 100 Avenida Presidio, San Clemente. Closed Session items will be considered at 5:00 p.m. and the Regular Business Meeting will commence at 6:00 p.m.



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MAYOR of the City of  
San Clemente, California



CITY CLERK of the City of  
San Clemente, California