

ORDINANCE NO. 1658

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA TO APPROVE ZONING AMENDMENT ZA 18-209 TO AMEND SAN CLEMENTE MUNICIPAL CODE TITLE 17, ZONING, CHAPTER 17.04, ADMINISTRATION, SECTION 17.04.030, APPLICABILITY, RELATING TO THE TIMING OF VESTED RIGHTS.

WHEREAS, the purpose of this Ordinance is to amend the City's Zoning Ordinance (SCMC title 17); and

WHEREAS, California law provides three paths to for a developer to obtain vested rights: (1) common law vested rights, (2) a development agreement (Cal. Gov. Code § 65864 et seq.), or (3) a vesting tentative map (Cal. Gov. Code § 66498.1 et seq.). Under common law vested rights, a developer obtains common law vested rights in a project if the developer performed substantial work and incurred substantial liabilities in good faith reliance on a government-issued permit (*Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 791); and

WHEREAS, San Clemente Municipal Code Section 17.04.030 contains some ambiguous language with regard to vested rights that this Ordinance to approve Zoning Amendment No. 18-209 will address; and

WHEREAS, on April 17, 2018, the City Council initiated a Municipal Code Amendment, a proposal to clarify the timing for expiration of entitlements for non-conforming uses; and

WHEREAS, by removing the current Subdivision C from Section 17.04.030 and adding the new Subdivision D below, that this Ordinance would ensure that the Zoning Ordinance, with respect to vested rights, is internally consistent, consistent with State law, leaves intact incentives for development agreements, and upholds the City's police and zoning authority; and

WHEREAS, on June 20, 2018, the Planning Commission conducted and concluded a duly noticed public hearing concerning the proposed code amendment, a voted 6-0 to recommend adoption to the City Council; and

WHEREAS, on July 24, 2018 the City Council conducted and concluded a duly noticed public hearing concerning the Municipal Code amendments contained herein as required by law and received testimony from City staff and all interested parties regarding the proposed amendments; and

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

WHEREAS, the City Council has also reviewed and considered the Planning

Commission's recommendation, and the agenda report and other evidence that was considered by the Commission, in connection with the proposed amendments that affect the City's zoning code; and

WHEREAS, all legal prerequisites to the adoption of the 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. Pursuant to San Clemente Municipal Code Section 17.16.040(F)(1), the City Council finds and determines as follows:

- A. The proposed amendment is consistent with the General Plan. Primary Goal 1 of the Land Use Plan is 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." (GPLU p. LU-3.) This amendment ensures that the City does not forego its police and zoning authority and ensures that Zoning Ordinance retain incentives for major projects to be promulgated by development agreements. Accordingly, this amendment would support the City's ability and effort to plan, build, retain, and attract projects that meet that maintain and enhance the City's lands and built environment. The proposed amendment is also consistent with the implementation measure to update the Zoning Ordinance, policy LU-3.02 to provide flexibility in development standards and policy G-1.02 for consistency as the amendment updates how zoning is applied, provides flexibility for vested rights and consistency in how they are applied to projects.
- B. The proposed amendment will not adversely affect the public health, safety and welfare. As explained above, this amendment ensures that the City does not forego its police and zoning authority. Accordingly, for projects that have not vested by under the common law vested rights (codified by this code amendment), a development agreement, or vesting tentative map, the City may ensure that the projects comply with the current, as-amended Zoning Ordinance. In addition, having a clear process to obtain vested rights ensures that neighborhood character, public health, safety and welfare are maintained and that future uses are compatible in zones for the City's residents, businesses, and visitors.

SECTION 3. CODE AMENDMENT. San Clemente Municipal Code Title 17, Zoning, Chapter 17.04, Administration, Section 17.04.03, Applicability, is hereby amended to read as follows (deletions shown in ~~strikethrough~~ and additions shown in underline):

**Title 17 - ZONING**

...

**Chapter 17.04 - ADMINISTRATION**

...

**Section 17.04.030 - Applicability.**

A. **Geographic Area.** The provisions of this title are declared to be in effect upon all properties included within the boundaries of each and every zone established by this title, except for the North Beach Study Area. For standards for the North Beach Study Area, please refer to Section 17.52.050, Requirements for the North Beach Study Area, of this title. For properties with a specific plan "SP" designation, the standards in the Zoning Ordinance shall apply when development standards are not specified within individual specific plans.

B. **A. Private Projects.**

1. No land, building, or structure shall be developed, used, constructed, altered, or maintained except in strict conformance with the provisions of this title.
2. No use that requires a permit, license or approval under the provisions of this title shall be made, continued, established or operated until all conditions of the permit license or approval have been complied with and the applicable permit, license or approval is finally granted.
3. No use that has obtained a permit, license or approval under the provisions of this title shall be operated in violation of, or contrary to, any terms or conditions of the granted permit, license or approval.

C. **B. Public Projects.** Unless otherwise exempted, federal, State, County, and public utility projects shall be subject to the provisions of this title to the extent allowed by law, including projects operated

by any combination of these agencies, or by a private person for the benefit of or on behalf of any such governmental agency.

D. ~~C. Exempt Projects.~~ The following projects shall be exempt from this amended Zoning Ordinance, subject to conditions referenced below:

1. ~~Projects for which an application has been deemed complete by the City, prior to the effective date of this amendment, for the last required discretionary approval for the project; and~~
2. ~~Projects that have received the last discretionary approval for the project from the City prior to the effective date of this amendment; and~~
3. ~~Projects that have been formally submitted for the issuance of Building Permits prior to the effective date of this amendment and do not require subsequent discretionary approval prior to receiving Building Permits.~~

~~The foregoing exemptions are intended to exempt from the provisions of this amended Zoning Ordinance those projects which are either in the process of receiving or have received the last discretionary approval necessary to develop the project. All such exempted projects shall be required to comply with the Zoning Ordinance as it existed on the date the application for the project was deemed complete. It is not the City's intent to exempt from this amended Zoning Ordinance changes to any project which are proposed after the effective date of the ordinance codified in this title. Furthermore, in granting or denying subsequent time extensions for exempted projects, the City shall consider the extent to which the project is inconsistent with the Zoning Ordinance of the City on the date the request for the time extension is considered.~~

**Applicability and Effect on Prior Approvals.** The regulations of this title shall apply to the construction, alteration, use, substitution, expansion, movement of any building or structure, and to the use of any parcel of land, on or after the effective date of the ordinance codified in this title and any subsequently adopted ordinance amending this title, unless a building permit has been lawfully issued by the city for the construction of a project, in which case that project may be completed under the provisions of this title as it may have existed at the time of issuance of the building permit; provided, that construction under the permit must have commenced and been diligently and continuously pursued within the time limit of a building permit or any extension thereof.

**SECTION 4. EXISTING CODE PROVISIONS.** 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 5. CEQA.~~ The City Council finds that this Ordinance is not subject to the requirements of California Environmental Quality Act ("CEQA") for the following reasons:

- A. This Ordinance is not "project" within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in direct or indirect physical change in the environment.
- B. This Ordinance is exempt under Section 15061(b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that this code amendment will have a significant effect on the environment.

The City Council, therefore, directs that a Notice of Exemption for this ordinance be filed with the County Clerk of the County of Orange in accordance with State CEQA Guidelines.

**SECTION 6. PUBLICATION.** The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within fifteen (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 7. RECORDS.** 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 City Hall, 100 Avenida Presidio, San Clemente, CA 92672.

**SECTION 8. SEVERABILITY.** 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 resolution irrespective of the invalidity of any portion thereof.

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

ATTEST:

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

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

APPROVED AS TO FORM:

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

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