



Agenda Item. 9C

Approvals:

City Manager RD

Dept. Head _____

Attorney _____

Finance CS

AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: April 7, 2020

Department: City Manager and City Attorney

Prepared By: Robert Dunek, Interim City Manager
Scott C. Smith, City Attorney

Subject: **INTRODUCTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING SECTIONS 3.24.190 AND 3.24.220 OF THE SAN CLEMENTE MUNICIPAL CODE GOVERNING TERMS FOR SHORT-TERM LODGING UNITS**

Fiscal Impact: None.

Background: Some San Clemente short-term lodging unit ("STLU") owners use rental agreements that can unduly limit the owners' recourse to repossess and enter upon a renter's violation of the rental agreement and/or San Clemente Municipal Code. This Ordinance amends sections 3.24.190 and 3.24.220 of the San Clemente Municipal Code to require STLU owners to utilize STLU rental agreements that give the owner the right, but not the obligation, to immediately terminate the rental agreement and evict the occupants upon a renter's violation of the rental agreement, the City's noise ordinance, section 17.28.292 (operating standards for STLUs regarding disorderly conduct, maximum occupancy, prohibited events etc.) , or Chapter 9.16 (prohibition of loud and unruly gatherings) of the San Clemente Municipal Code.

Discussion: As noted above, recent events have demonstrated that some STLU owners utilize rental agreements that give the STLU owner little or no recourse upon a renter's violation of the rental agreement and/or San Clemente Municipal Code. Section 3.24.180 of Chapter 3.24 of Title 3 of the San Clemente Municipal Code provides that no STLU within the City may be rented or advertised without an STLU operating license issued by the City. When submitting an application for an STLU operating license, San Clemente Municipal Code section 3.24.190 requires, among other things, applicants to provide the following information and materials to the City: (1) The name, address, telephone number, and email address of the STLU owner and operator; (2) the STLU's address, telephone number, approximate square footage, number of bedrooms and rooms, and maximum number of overnight renters; (3) diagrams, photographs, site plans, and/or sketches related to on-site parking, the STLU's interior layout, and all buildings and structures on-site; (4) proof of transient occupancy tax registration/compliance; (5) where the STLU is governed by an owner's or homeowner's association ("HOA"), express written approval of the proposed STLU by the HOA's governing body;

and (6) proof that the proposed STLU complies with the requirements of Title 17 (Zoning) of the San Clemente Municipal Code.

All STLU license holders must also comply with the conditions provided in San Clemente Municipal Code section 3.24.220. Section 3.24.220's conditions require, among other things, that each STLU: (1) comply with the City's Zoning Code and any STLU zoning permit conditions; (2) apply for and obtain an STLU operating license on an annual basis; and (3) collect and remit to the City all transient occupancy taxes in compliance with section 3.24.070 of the San Clemente Municipal Code. An STLU's violation of the San Clemente Municipal Code can result in, among other things, the revocation of an STLU's operating license or the imposition of additional conditions on an STLU's operating license.

Recent events have demonstrated that it is imperative for STLU owners within the City to have at their disposal a variety of remedial options when STLU renters violate the terms of an STLU rental agreement and/or the San Clemente Municipal Code. To that end, this Ordinance amends San Clemente Municipal Code section 3.24.190 to require STLU licensees to use STLU rental agreements giving the owner the right to immediately terminate the rental agreement and evict the occupants upon a renter's violation of the rental agreement, the City's noise ordinance, section 17.28.292 (operating standards for STLUs re disorderly conduct, maximum occupancy, prohibited events etc.) or Chapter 9.16 (prohibition of loud and unruly gatherings) of the San Clemente Municipal Code.

Under a rental agreement in compliance with section 3.24.190 (as revised by this Ordinance), STLU owners would have the right to immediately terminate the rental agreement and evict an STLU's occupants upon a renter's violation of the rental agreement, the City's noise ordinance, or violation of section 17.28.292 or chapter 9.16 of the San Clemente Municipal Code. To ensure compliance with section 3.24.190 (as amended by this Ordinance), this Ordinance also amends San Clemente Municipal Code section 3.24.220 ("Conditions for STLU operating licenses") by adding a condition requiring STLU owners to utilize rental agreements that contain a provision giving the STLU owner the right to immediately terminate the rental agreement and evict an STLU's occupants upon a renter's violation of the rental agreement, the City's noise ordinance, or violation of section 17.28.292 or chapter 9.16 of the San Clemente Municipal Code.

To preserve the tranquility of neighborhoods surrounding an STLU and to protect the health and safety of residents and visitors alike, Staff recommends that the City Council introduce the attached *ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING SECTIONS 3.24.190 AND 3.24.220 OF THE SAN CLEMENTE MUNICIPAL*

**CODE RELATING TO REGULATIONS GOVERNING SHORT-TERM
LODGING UNITS WITHIN THE CITY.**

**Environmental
Review:**

Staff has determined that 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 State CEQA Guidelines, section 15378, 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.

Staff recommends that the City Council direct that a Notice of Exemption for these ordinance be filed with the County Clerk of the County of Orange.

**Recommended
Action:**

Staff Recommends that the City Council introduce the attached Ordinance titled: **ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING SECTIONS 3.24.190 AND 3.24.220 OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO REGULATIONS GOVERNING SHORT-TERM LODGING UNITS WITHIN THE CITY**

Attachments:

- (1) **ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA AMENDING SECTIONS 3.24.190 AND 3.24.220 OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO REGULATIONS GOVERNING SHORT-TERM LODGING UNITS WITHIN THE CITY**

Notification: None

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE AMENDING SECTIONS 3.24.190 AND 3.24.220 OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO REGULATIONS GOVERNING ACCESS TO SHORT-TERM LODGING UNITS WITHIN THE CITY

WHEREAS, Section 3.24.180 of Chapter 3.24 of Title 3 of the San Clemente Municipal Code provides that no short-term lodging unit ("STLU") within the City of San Clemente ("City") may be rented or advertised without an STLU operating license issued by the City; and

WHEREAS, the City and STLU owners and operators have a shared interest in enforcing laws relating to the public peace and welfare; and

WHEREAS, such interests are best furthered when owners and operators and law enforcement working on their behalf have secured the broadest rights possible to access and control of STLUs; and

WHEREAS, recent events including breaches of the public peace and welfare and serious crimes committed in STLUs indicate that the City's regulation of STLUs should include requirements for default rental provisions providing for owner/operator access to STLUs on the broadest terms possible in order to provide uniformity among STLU rental agreements and to enable law enforcement to assist owners, operators, and the City in gaining access to STLUs in order to enforce the City's municipal code and other laws and to restore the peace if breached pursuant to an STLU rental; and

WHEREAS, individuals interested in obtaining an STLU operating license must, among other things, file an application with the Community Development Director; and

WHEREAS, when submitting an application for an STLU operating license, San Clemente Municipal Code section 3.24.190 requires, among other things, applicants to provide the following information and materials to the City:

- The name, address, telephone number, and email address of the STLU owner and operator
- The STLU's address, telephone number, approximate square footage, number of bedrooms and rooms, and maximum number of overnight renters
- Diagrams, photographs, site plans, and/or sketches related to on-site parking, the STLU's interior layout, and all buildings and structures on-site

- Proof of transient occupancy tax registration/compliance
- Where the STLU is governed by an owner's or homeowner's association ("HOA"), express written approval of the proposed STLU by the HOA's governing body
- Proof that the proposed STLU complies with the requirements of Title 17 (Zoning) of the San Clemente Municipal Code

WHEREAS, all STLUs issued an STLU operating license from the City must also comply with the conditions provided in San Clemente Municipal Code section 3.24.220; and

WHEREAS, section 3.24.220's conditions require, among other things, that each STLU:

- Comply with the City's Zoning Code and any STLU zoning permit conditions
- Apply for and obtain an STLU operating license on an annual basis
- Collect and remit to the City all transient occupancy taxes in compliance with section 3.24.070 of the San Clemente Municipal Code

WHEREAS, pursuant to San Clemente Municipal Code section 3.24.067, an STLU's violation of the San Clemente Municipal Code can result in, among other things, the revocation of an STLU's operating license or the imposition of additional conditions on an STLU's operating license; and

WHEREAS, recent events have demonstrated that some STLU owners utilize rental agreements that give the STLU owner limited access to the STLU and recourse upon a renter's violation of the rental agreement and/or San Clemente Municipal Code; and

WHEREAS, to preserve the tranquility of the surrounding neighborhood and for the health and safety of residents and visitors alike, it is imperative that STLU owners within the City have at their disposal a variety of remedial options when STLU renters violate the terms of an STLU rental agreement and/or the San Clemente Municipal Code (e.g., violation of the City's noise ordinance, exceedance of the STLU's occupancy limit, engage in disorderly conduct etc.); and

WHEREAS, to ensure that STLU owners possess sufficient remedial options, the City Council desires to amend the STLU operating license application requirements provided in San Clemente Municipal Code section 3.24.190; and

WHEREAS, this Ordinance amends San Clemente Municipal Code section

3.24.190 to require STLU operating license applicants to demonstrate that the STLU's rental agreement gives the owner the right to terminate the rental agreement and evict the occupants upon a renter's violation of the rental agreement, the City's noise ordinance, and/or section 17.28.292 of the San Clemente Municipal Code (operating standards for STLUs re disorderly conduct, maximum occupancy, prohibited events etc.); and

WHEREAS, under a rental agreement in compliance with section 3.24.190 (as revised by this Ordinance), STLU owners would have the right to terminate the rental agreement and evict an STLU's occupants upon a renter's violation of the rental agreement, the City's noise ordinance, or violation of 17.28.292 of the San Clemente Municipal Code; and

WHEREAS, to ensure compliance with section 3.24.190 (as amended by this Ordinance), this Ordinance also amends San Clemente Municipal Code section 3.24.220 ("Conditions for STLU operating licenses") by adding a condition requiring STLU owners to utilize a standard rental agreement provision giving the STLU owner the right to terminate the rental agreement and evict an STLU's occupants upon a renter's violation of the rental agreement, the City's noise ordinance, or violation of 17.28.292 of the San Clemente Municipal Code.

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. CEQA Findings. 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 State CEQA Guidelines, section 15378, 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.

Section 3. Notice of Exemption. The City Council, based on the above CEQA findings, 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 4. Amendment to Section 3.24.190. Section 3.24.190 of Title 3 of the San Clemente Municipal Code is hereby amended to read as follows (additions shown in underline and deletions shown in ~~strikeout~~):

Section 3.24.190 - Application for STLU Operating License.

The owner or owner's agent shall file an application for an STLU operating license with the Community Development Director on forms provided by the City. The application shall contain the following information:

1. The name, address, telephone number, and email address of the STLU owner.
2. The name, address, telephone number, and email address of the operator for the STLU.
3. The street address and telephone number for the STLU itself.
4. The approximate square footage, the number of bedrooms or rooms in the STLU, and the maximum numbers of overnight renters in the STLU.
5. A diagram or photograph of the property showing the number and location of designated legal on-site parking spaces and the maximum number of vehicles allowed for overnight guests in the STLU.
6. A site plan of the property showing all buildings and structures on-site, the location of the STLU, and locations of any development requirements, such as trash facilities as identified in Section 17.28.292, Short-term lodging units, of the Zoning Ordinance.
7. A sketch or diagram showing the complete interior configuration of the STLU, including, without limitation, the location of all bedrooms, kitchen, and locations of any operational requirements, such as where the operating license will be posted within the STLU as identified in Section 17.28.292, Short-term lodging units, of the Zoning Ordinance.
8. If an STLU has already previously operated as such, a transient occupancy registration certificate demonstrating that the STLU operator has complied with all its TOT obligations under Chapter 3.24 of the code.

9. If the proposed STLU is governed by an owner's, or homeowners' association (HOA), express written approval of the proposed STLU use by the HOA's governing body.
10. A copy of the STLU's standard rental agreement, which shall include the following language or language substantially similar thereto: "The owner or the owner's agent has the right to immediately terminate the rental agreement and evict the occupants upon: (1) a violation of the rental agreement, or (2) a violation, as determined by the Orange County Sheriff's Department or City Code Compliance Division personnel, of Section 17.28.292, Chapter 8.48, or Chapter 9.16 of the San Clemente Municipal Code." All rental contracts for the STLU shall include this language.
4011. Proof that the STLU is (1) permitted under the requirements of Title 17 of this code or (2) a legally established nonconforming use under Subsection 17.72.060(F).
4412. Such other information as the Finance and Administrative Services Director and Community Development Director deem reasonably necessary to administer this chapter.

Section 5, Section 3.24.220 Amendment. Section 3.24.220 of Title 3 of the San Clemente Municipal Code is hereby amended to read as follows (additions shown in underline and deletions shown in strikeout):

Section 3.24.220 - Conditions

The following conditions shall apply to all STLU operating licenses:

1. STLUs must comply with all provisions of Title 17 of the code and with all STLU zoning permit conditions.
2. An STLU operating license is valid for 12 months from the date issued. A new STLU operating license must be applied for and secured each year to continue to operate. The requirements in Subsections 17.28.292C.4. [Insurance] and 10. [Notice] of the Zoning Ordinance must be satisfied each year with each new permit issuance or change.
3. Applications for new STLU operating licenses are considered on a first-come-first-served basis, except that if the STLU owner already

holds a valid STLU operating license when he or she applies for a new license for that same STLU (i.e. if the owner applies for a new license before the existing license expires) then the application will be considered a renewal application. A renewal must comply with all the requirements of a new license, but the application is considered when it is deemed complete instead of on a first-come-first-served basis.

4. An STLU owner shall timely comply with Section 3.24.070. Owner shall timely submit the filing whether or not the STLU was rented during the reporting period and transient occupancy tax was collected.
5. The Finance and Administrative Services Director, or designee, may request access to an STLU or to records related to the use and occupancy of the unit for the purpose of inspection or audit to determine that the objectives and conditions of this chapter are being fulfilled. On such request, the STLU owner shall provide access to the Director, or designee, during normal business hours within five (5) business days, unless the request is related to health and safety concerns at the STLU, in which case immediate entry shall be provided.
6. Before occupancy by a renter, the STLU owner or operator must enter into a rental agreement with the renter containing the provision approved by the Community Development Director pursuant to Section 3.24.190(10) of this code.
7. If the STLU owner or operator immediately terminates the rental agreement and evicts the occupants per the agreement provision required pursuant to Section 3.24.190(10) of this code, then the STLU owner or operator shall, upon request, provide a copy of the signed rental agreement to the Orange County Sheriff's Department or City Code Compliance Division within five (5) business days.

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 ordinance 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

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
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

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