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original staff report

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CIVIC CENTER PLAZA TOWERS
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SANTA ANA, CALIFORNIA 92701
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Item 15(a)
Nov. 4, 2016 Agenda

October 31, 2016

RECEIVED
South Coast Region

OCT 31 2016

California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, California 90802-4325 SENT VIA FAX 562-590-5084

CALIFORNIA
COASTAL COMMISSION

Re: Dana Point Application, Item 15(a)
November 4, 2016 Agenda

Dear Commissioners,

MARK S. ROSEN

I represent an organization named Keep Dana Point Friendly, whose members include residents of Dana Point who own property used for short term rentals, real estate professionals, business owners, and other concerned citizens.

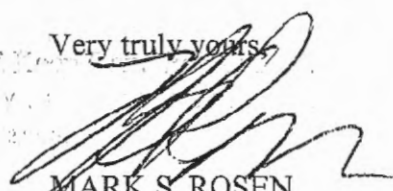
We support the LCPAs which are on your agenda for November 4, 2016. We are proud that Dana Point has provided ordinances which satisfy the balance between the rights of owners and the mandate of the Coastal Act to protect, encourage, and provide for lower cost visitor and recreational facilities as envisioned in Public Resource Code §30213.

For whatever reasons, others in Dana Point have circulated referendum petitions to try to stop the enactment. They may well appear at the November 4 meeting to ask you to delay implementation of the measures.

We oppose any delay. We wrote a detailed letter to the Orange County Registrar of Voters and the Dana Point City Attorney explaining why the referenda are without merit. I am enclosing a copy of the letter (without the attachments) for your consideration.

Thank you for your consideration. We urge the Coastal Commission to approve the item on the agenda.

Very truly yours,


MARK S. ROSEN

cc: Patrick Munoz, Esq.

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October 31, 2016

Neal Kelley VIA FIRST CLASS MAIL AND EMAIL
Orange County Registrar of Voters nealkelley@rov.ocgov.com
1300 S. Grand Avenue, Building C
Santa Ana, California 92705

Re: Dana Point Referenda

Dear Mr. Kelley,

I represent an organization named Keep Dana Point Friendly, whose members include residents of Dana Point who own property used for short term rentals, real estate professionals, business owners, and other concerned citizens. Keep Dana Point Friendly is opposed to the two referenda petitions submitted to you on or about October 5 with regard to short term rentals. For the reasons outlined below, we believe the referenda are improper and should not be certified by either you or the Dana Point City Council.

In addition, in the emailed version of this letter, I am attaching a video showing that the referenda proponents did not make available the text of the ordinances purported to be subject to the referenda. (I am using the term "ordinances" for the sake of convenience, although our view is that they were administrative pronouncements not subject to referenda.)

I am sending a copy of this letter to Patrick Munoz of Rutan & Tucker, counsel for the City of Dana Point, by mail and email with the video attachment.

It is our view that the two ordinances should not be certified for several reasons, including:

1. **The referenda are not timely.** A referendum petition is a document protesting a legislative act to be presented to the governing board and possibly to the voters of the jurisdiction (Elections Code §9237). A referendum petition can only commence and be completed within 30 days after the date of the final passage of the ordinance (Elections Code §9235). Some ordinances are not subject to a referendum, such as when state law prescribes the manner of their passage and adoption (*Id.*).

The referenda proponents are assuming that Ordinance 16-06 (regarding a zone text amendment ("ZTA")) and Ordinance 16-07 (regarding a specific plan amendment ("SPA")) were

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October 31, 2016
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approved by the Dana Point City Council on September 6, 2016. They are assuming the 30 day periods were triggered by those approvals.

However, the ZTA and the SPA were actually approved by the City Council on May 17, 2016, and no referendum petitions were circulated within the 30 days thereafter. Although the May 17 resolutions had a later effective date, the period for a referendum begins running from the date of enactment, not the date of effect. *Assembly of State of Cal. v. Deukmejian* (1982) 30 Cal. 3d 638, 654.

The ZTA and the SPA were included in Local Coastal Program Amendment (LCPA) ordinances. LCPAs are legislative acts (*Security National Guaranty, Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402, 415-416) that might have been subject to a referendum but the proponents did not attempt to bring referenda against them.

The May 17, 2016, resolutions are Resolution No. 16-05-17-02 and Resolution No. 16-05-17-03. I am enclosing them with this letter.

Resolution No. 16-05-17-02 provides for LCPA 13-0001. In the second Whereas clause, it explains that it is for the purpose of approving the ZTA. Section 3 explains that LCPA 13-0001 pertains to an amendment to Chapter 9.07 – Special Use Standards of the Zoning Ordinance to allow short term rentals in all the Zoning districts where residential uses are allowed. Section 3 then provides:

"A copy of Ordinance No. 16-06 approving ZTA13-0001 and LCPA13-0001 with the specific content of the proposed amendments is attached hereto as Exhibit A and is incorporated herein by this reference as though fully set forth herein."

Similarly, Resolution No. 16-05-17-03 provides for LCPA 13-0002. In the second Whereas clause, it explains that it is for the purpose of approving the SPA. Section 3 explains that LCPA 13-0002 pertains to an amendment to Section XI-Land Use Regulations; Section V – "Special Regulations and Information" of the Dana Point Specific Plan, to allow short term rentals in all districts where residential uses, which are located within the boundaries of the Dana Point Specific Plan. Section 3 then provides:

"A copy of Ordinance No. 16-07 approving SPA13-0001 and LCPA13-0002 with the specific content of the proposed amendments is attached hereto as Exhibit B and is incorporated herein by this reference as though fully set forth herein."

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The May 2016 resolutions were the culmination of years of work on short term rentals. On April 2, 2013, the City Council had enacted Ordinance No. 13-01, adding Chapter 5.38 to the municipal code. This ordinance recognized that short term rentals were occurring in Dana Point. The ordinance created a permitting process to allow owners to apply for a permit for short term rentals and to register to pay a transient occupancy tax (also known as a hotel visitors tax). The ordinance also allowed homeowner associations to ban short term rentals within their associations.

Although Ordinance No. 13-01 provided for regulating short term rentals, it did not effectuate a change to zoning or permitted uses. On October 28, 2013, the Dana Point Planning Commission recommended that the city approve a ZTA, SPA, and LCPAs. The matters went to the City Council. On January 21, 2014, the city council had second reading of two ordinances amending the zoning code and specific plan and authorizing staff to submit the proposed LCPA to the Coastal Commission for approval and certification.

On April 14, 2016, the Coastal Commission approved the LCPAs (with the ZTA and SPA) with suggested minor modifications.

It was the consideration and approval of the minor modifications that the city council passed at the May 17, 2016, meeting.

In other words, the ZTA and the SPA had already been considered and adopted by the City Council long before the September 6, 2016 meeting. They are not subject to referendum because they were passed more than 30 days before the petition campaign began.

2. The referenda are prohibited because they are inconsistent with the LCPA resolutions.

Separate and apart from the timeliness issue, the LCPA resolutions have priority over the September ordinances and any referenda on them.

The LCPA resolutions were adopted by the City Council because Dana Point is subject to the California Coastal Act (Public Resources Code §30000 *et seq.*). The cities in the coastal zone must adopt Local Coastal Programs. "A local coastal program includes a land use plan, which functions as the general plan for property in the coastal zone" (*McAllister v. California Coastal Commission* (2008) 169 Cal.App.4th 912, 922-923). As a general plan for property in the coastal zone, it is effectively "a 'constitution'", *Leshner Communications Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540; *DeVita v. City of Napa* (1995) 9 Cal.4th 763. The LCPAs would supersede any subsequent ordinance or enactment that is inconsistent with them. See *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868, 874-876. This includes any referenda that would result in an inconsistency with the general plan. *deBottari v. Norco City Council* (1985) 171 Cal.App.3d 1204.

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Ordinarily development resolutions can be subject to referenda even in coastal zones. See *Yost v. Thomas* (1984) 36 Cal.3d 561. However, in *Yost*, the LCP has only designated a particular area for general hotel and related commerce uses. The specific plans, tract maps, and other amendments that were subject to referendum were related to a specific project. The referendum would not have contradicted or interfered with the LCP because it did not contradict the general usage in the LCP. By contrast, the LCPAs in the May resolutions were for a very particular purpose – to allow for short term rentals. The proposed referenda would contradict, to the letter, the LCPAs that were approved by the city council.

Furthermore, because the LCPAs were the legislative act, the later enactments were in fact administrative measures designed to clarify the legislation that had already been approved through the LCPAs. The referenda do not purport to repeal the LCPAs. Accordingly, the referenda are illegal and should not be certified.

3. **The referenda violate state policy.** There is another independent reason why the referenda are improper. Through Dana Point ordinance 5.38, Dana Point has allowed short term rentals since 2013. This is in line with Public Resources Code §30213, which provides in part:

“Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.”

The Coastal Commission has expressed a policy that short term rentals in coastal areas are in support of this statutory requirement. It has rejected short term rental ordinances that prohibit short term rentals, and in fact has pointed to Dana Point's ordinance as a model. By way of example, I am attaching a letter sent by the Coastal Commission on August 26, 2016, to an Oxnard community association. The letter explains why a ban on short term rentals would violate sections 30213 and 30222. It states in part: “A prohibition, such as the rule adopted by the Board of Directors ... of an entire class of accommodation that provides widespread lodging opportunities that are varied in cost, is especially problematic in terms of consistency with the Coastal Act.” On page 3, the letter referred to Dana Point's ordinance: “For example, the Commission recently certified an amendment to the certified LCP for the City of Dana Point at its April 2016 hearing that provided for new regulations for short-term vacation rentals ...”.

A referendum that would lead to a tightening or prohibition of short term rentals would contradict the state policy expressed in §30213 as interpreted by the Coastal Commission. Such an action would roll back access to coastal recreation, and thus would be contrary to state law.

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4. The referenda proponents discouraged examination of the text of the ordinances.

We understand that the referendum proponents purported to attach a copy of the ordinances to their referendum petitions. Elections Code §9238(b) requires that each section of the petition contain the text of the ordinance or the portion of the ordinance that is the subject of the referendum.

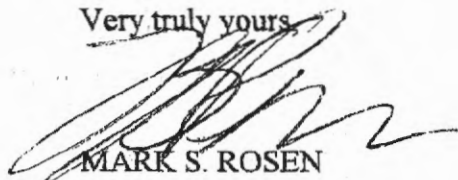
However, a video of an actual encounter between a petition circulator and a potential signer shows that the circulator told at least one person that the ordinance was not available and if the person wanted to see the ordinance, he would have to go online. The video is attached to the email copy of this letter. If this practice was widespread, it should invalidate the signatures. Furthermore, in the three days the Keep Dana Point Friendly group collected signature withdrawals from residents who felt they were deceived into signing the referenda, the group collected over sixty signatures. At the very least, the Registrar should make inquiry before certifying the signatures. If the circulators were discouraging or preventing potential signers from being able to see the ordinances, then the purpose of requiring the text to be contained in the petition was defeated. *Cf. Capo for Better Representation v. Kelley* (2008) 158 Cal.App.4th 1455, 1465 (signatures disqualified where signers were discouraged from reading the answers of targets of a recall).

For all of these reasons, the referenda petitions should not be certified either by the Registrar of Voters or by the City Council.

Since this letter was drafted, we have learned that the Dana Point staff has placed on the city council's November 1 agenda a recommendation that the city request the item on the November 4 Coastal Commission agenda be postponed. For the reasons stated herein, we believe the referenda should not be certified, and, therefore, the Coastal Commission item should go forward. We urge the City Council to push forward with its policy, approved unanimously by the City Council on May 17, 2016, and not delay any more.

Thank you for your consideration.

Very truly yours,



MARK S. ROSEN

cc: Patrick Munoz, Esq.
611 Anton Boulevard
Suite 1400
Costa Mesa, CA 92626-1931

pmunoz@rutan.com

Attachments:

Resolution No. 16-05-17-02

Resolution No. 16-05-17-03

Coastal Commission Letter, August 26, 2016

Video (on email version)

TOTAL P.008

Received Oct-31-16 03:42pm

From-714 285 9840

To-California Coastal

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CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

F15a

October 14, 2016

TO: Commissioners and Interested Persons

FROM: Sherilyn Sarb, Deputy Director, South Coast District
Karl Schwing, South Coast District Manager
Charles Posner, Supervisor of Planning
Fernie Sy, Coastal Program Analyst

RE: Concurrence with the Executive Director's determination that the action of the City of Dana Point accepting certification with suggested modifications of Local Coastal Program Amendment No. 1-14 (LCP-5-DPT-14-0105-1) is legally adequate. For Commission review at the November 4, 2016 meeting in Half Moon Bay.

On February 3, 2014, the City submitted Local Coastal Program Amendment request No. 1-14 for Commission certification. The LCP Amendment request was submitted to the Commission's South Coast District office with City Council Resolution Nos. 13-12-03-09 and 13-12-03-10. Amendment Request No. 1-14 amends the City's Zoning Code Ordinance, which is the Implementation Plan (IP) for the '1996' LCP, and the Dana Point Specific Plan Local Coastal Program Implementation Plan (IP) ('1986' LCP) to allow short-term rentals in all the Zoning Districts where residential uses are allowed, subject to the criteria listed in Chapter 5.38 of the City's Municipal Code.

On April 14, 2016, the Commission approved LCP Amendment No. 1-14 with suggested modifications. On September 6, 2016, the Dana Point City Council adopted Ordinance No. 16-06 and 16-07 incorporating into the Certified LCPs the modifications suggested by the Commission pursuant to its approval of LCP Amendment No. 1-14 (see Exhibit A of attached Ordinance No. 16-06 and Exhibit A of attached Ordinance No. 16-07). The City submitted these Ordinances, which acknowledged receipt of the Commission's resolution of certification, accepted and agreed to the Commission's modifications and adopted changes to its LCPs consistent with the Commission's certification order.

The City requests that the Executive Director determine that its resolution is legally adequate to satisfy the specific requirements set forth in the Commission's April 14, 2016 certification order (see attachment).

Pursuant to Section 13544.5 of the California Code of Regulations, Title 14, Division 5.5, the Executive Director must determine that the formal action taken by the City of Dana Point acknowledging receipt and acceptance of and agreement with the Commission's certification of the above-referenced LCP amendment with suggested modifications is legally adequate to satisfy the specific requirements set forth in the Commission's certification order and report that determination to the Commission.

In this case, the Executive Director has determined that the City's action is legally adequate. Unless a majority of the Commissioners present object to the Executive Director's determination, the certification of City of Dana Point Local Coastal Program Amendment No. 1-14 shall become effective upon the

filing of the required Notice of Certification with the Secretary of the Natural Resources Agency as provided in Public Resources Code Section 21080.5(d)(2)(E).

STAFF RECOMMENDATION

Staff recommends that the Commission concur with the Executive Director's determination that the City's action is legally adequate.

ORDINANCE NO. 16-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA13-0001 TO ALLOW SHORT TERM RENTALS IN ALL THE ZONING DISTRICTS WHERE RESIDENTIAL USES ARE ALLOWED AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

Applicant: City of Dana Point
File No.: ZTA13-0001/LCPA13-0001

The City Council of the City of Dana Point does hereby ordain as follows:

WHEREAS, in January, 1994, the City of Dana Point adopted its Zoning Code and Zoning Map; and

WHEREAS, the City desires to amend its Zoning Ordinance; Chapter 9.07 – Special Use Standards; to allow short term rentals in all the Zoning districts where residential uses are allowed; and

WHEREAS, the Zone Text Amendment will be consistent with and will provide for the orderly, systematic and specific implementation of the General Plan; and

WHEREAS, the City of Dana Point adopted a Local Coastal Program, which was certified by the California Coastal Commission and may be amended in whole or in part; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on October 28, 2013, to consider the said Zone Text Amendment and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the Planning Commission considered all factors relating to ZTA13-0001 and LCPA13-0001; and recommended the City Council approve the said Zone Text Amendment, and LCPA; and

WHEREAS, the City Council held a duly noticed public hearing as prescribed by law on December 3, 2013, to consider Negative Declaration and, specifically said Zone Text Amendment, and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to ZTA 13-0001, and LCPA 13-0001 and approved said Zone Text Amendment, and LCPA; and

WHEREAS, LCPA13-0001 was submitted to the Coastal Commission, which reviewed such amendment pursuant to the California Coastal Act and on April 14, 2016, approved Local Coastal Program Amendment LCPA13-0001 with suggested modifications; and

WHEREAS, the Coastal Commission found that the LCP Amendment and Implementation Plan amendment with the suggested modifications was consistent with the policies of Chapter 3 of the Coastal Act; and

WHEREAS, said suggested modifications have been accepted and agreed to, and incorporated into ZTA13-0001 and LCPA13-0001, and

WHEREAS, the Zone Text Amendment will be consistent with and will provide for the orderly, systematic and specific implementation of the General Plan, as such General Plan would be amended; and

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code and CEQA Guidelines Sections 15251(f) and 15265(a)(1); and

WHEREAS, the City Council did on May 17, 2016, conduct a duly noticed public hearing as prescribed by law to consider the Zone Text Amendment and LCPA; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to ZTA 13-0001 and LCPA 13-0001; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Dana Point as follows:

- A. That the above recitations are true and correct;
- B. The Zone Text Amendment is attached hereto as Exhibit "A" and incorporated herein by reference;
- C. That the proposed action complies with all other applicable requirements of state law and local Ordinances;

- D. That the Zone Text Amendment ZTA13-0001 is in the public interest;
- E. The preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code;
- F. The proposed amendment to the Zoning Code is consistent with the General Plan;
- G. The City Council adopt Zone Text Amendment ZTA13-0001 for the reasons outlined herein including but not limited to: requiring the owners of short term rentals to obtain a City issued permit authorizing such use in a manner provided by Chapter 5.38 of the Municipal Code to safeguard the peace, safety and general welfare of the residents of Dana Point and their visitors and guests by eliminating excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse related to short-term rentals;
- H. That the City Council adopt the following findings:
 - 1. That the public and affected agencies have had ample opportunity to participate in the LCPA process. **Proper notice in accordance with the LCP Amendment procedures has been followed.**
 - 2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the Land Use Plan is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act. **The amendments to the Zoning Code are consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources.**
 - 3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. **As a Zone Text Amendment, no specific development is proposed.**
 - 4. That the level and pattern of development proposed is reflected in the Zoning Code. **The applicable sections are being amended accordingly to be consistent with state law.**

5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. **Proper notice in accordance with the LCP Amendment procedures has been followed.**
 6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. **The City's Zoning Ordinance is being amended concurrently with the LCP amendment.**
- I. That the City Council includes the following findings submitting the LCPA to the Coastal Commission:
1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended; the California Coastal Act of 1976.
 2. The City include the Zone Text Amendment in its submittal to the Coastal Commission and state that the amendment to the Local Coastal Plan is to the implementing actions only.
 3. The City certifies that the Land Use Plan, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act in that no changes are proposed to the Land Use Plan.
 4. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
 5. The Ordinance of the City Council include the Zone Text Amendment, and Local Coastal Program Amendment numbers ZTA13-0001 and LCPA13-0001 when submitted to the Coastal Commission.
 6. The City certifies that the amendments will be submitted to the Coastal Commission for review and approval as an Amendment to the Local Coastal Program.
- J. That the City Council adopts the amendments to the City Zoning Code as follows:

The allowance of short term rentals shall be added in Chapter 9.07 of the Zoning Ordinance as shown in the attached "Exhibit A". This amendment to the Zoning Ordinance constitutes the LCPA.


- K. That the City Council adopts Zone Text Amendment ZTA13-0001, which would amend the Dana Point Local Coastal Program pursuant to LCPA13-0001. The City Council approves the amendment for the reasons outlined herein, including but not limited to: requiring the owners of short term rentals to obtain a City issued permit authorizing such use in a manner provided by Chapter 5.38 of the Municipal Code to safeguard the peace, safety and general welfare of the residents of Dana Point and their visitors and guests by eliminating excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse related to short-term rentals.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

PASSED, APPROVED, AND ADOPTED this 6th day of September, 2016


JOHN A. TOMLINSON, MAYOR

ATTEST:


KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

I, KATHY WARD, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 16-06 was duly introduced at a regular meeting of the City Council on the 17th day of May, 2016, and was duly adopted and passed at a regular meeting of the City Council on the 6th day of September, 2016, by the following vote, to wit:

AYES: Council Members Olvera, Schoeffel, and Mayor Tomlinson

NOES: Council Member Muller and Mayor Pro Tem Viczorek

ABSTAIN: None

ABSENT: None


KATHY WARD, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF DANA POINT)

AFFIDAVIT OF POSTING
AND PUBLISHING

KATHY WARD, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 16-06, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING ZONE TEXT AMENDMENT ZTA13-0001 TO ALLOW SHORT TERM RENTALS IN ALL THE ZONING DISTRICTS WHERE RESIDENTIAL USES ARE ALLOWED AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0001 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION

was published in summary in the Dana Point News on the 26th day of May, 2016, and the 15th day of September, 2016, and, in further compliance with City Resolution No. 91-10-08-1, on the 19th day of May, 2016, and the 8th day of September, 2016, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

Dana Point City Hall
Capistrano Beach Post Office
Dana Point Post Office
Dana Point Library

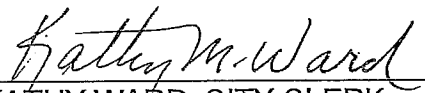

KATHY WARD, CITY CLERK
Dana Point, California

Exhibit "A"

ZONE TEXT AMENDMENT ZTA13-0001

The following Zoning Code Chapter is proposed to be amended as follows
(Inserts are underlined):

Chapter 9.07

SPECIAL USE STANDARDS

Section 9.07.260 Short Term Rentals

Short term rentals, as defined in Chapter 5.38 of the City's Municipal Code, are allowed in all the zoning districts where residential uses are allowed, including, but not limited to detached single-family dwellings, condominiums, duplexes, triplexes, townhomes and multiple-family dwellings. No owner of a short term rental shall offer to rent, or advertise for rent the short term rental to another person without a valid short-term rental permit approved and issued by the City, as stipulated in Chapter 5.38 of the Municipal Code. Chapter 5.38 of the City of Dana Point Municipal Code (Short-Term Rental Permits) is part of the City's certified Local Coastal Program. Any change(s) that limit or prohibit short term rentals in the coastal zone, as determined by the Executive Director of the Coastal Commission, shall be submitted to the Coastal Commission for certification as a Local Coastal Plan Amendment.

ORDINANCE NO. 16-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING SPECIFIC PLAN AMENDMENT SPA13-0001 TO ALLOW SHORT TERM RENTALS IN ALL THE DISTRICTS WHERE RESIDENTIAL USES ARE ALLOWED WITHIN THE SPECIFIC PLAN'S BOUNDARIES, AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0002 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

Applicant: City of Dana Point
File No.: SPA13-0001/LCPA13-0002

The City Council of the City of Dana Point does hereby ordain as follows:

WHEREAS, upon City's incorporation in 1989, the Dana Point Specific Plan was recognized and incorporated by the City of Dana Point; and

WHEREAS, the City of Dana Point desires to amend this Specific Plan; Section XI-Land Use Regulations; Section V – "Special Regulations and Information"; to allow short term rentals in all the districts where residential uses are allowed within the boundaries of this Specific Plan; and

WHEREAS, the Specific Plan Amendment will be consistent with and will provide for the orderly, systematic and specific implementation of the General Plan; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on October 28, 2013, to consider the said Specific Plan Amendment and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the Planning Commission considered all factors relating to SPA13-0001 and LCPA13-0002; and recommended the City Council approve the said Specific Plan Amendment, and LCPA; and

WHEREAS, the City Council held a duly noticed public hearing as prescribed by law on December 3, 2013, to consider Negative Declaration and, specifically said Specific Plan Amendment, and Local Coastal Program Amendment; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to SPA 13-0001, and LCPA 13-0002; and

WHEREAS, LCPA13-0002 was submitted to the Coastal Commission, which reviewed such amendment pursuant to the California Coastal Act and on April 14, 2016, approved Local Coastal Program Amendment LCPA13-0002 with suggested modifications; and

WHEREAS, the Coastal Commission found that the LCP Amendment and Implementation Plan amendment with the suggested modifications was consistent with the policies of Chapter 3 of the Coastal Act; and

WHEREAS, said suggested modifications have been accepted and agreed to, and incorporated into SPA13-0001 and LCPA13-0002, and

WHEREAS, the Zone Text Amendment will be consistent with and will provide for the orderly, systematic and specific implementation of the Dana Point Specific Plan as such would be amended; and

WHEREAS, the preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code and CEQA Guidelines Sections 15251(f) and 15265(a)(1); and

WHEREAS, the City Council did on May 17, 2016, conduct a duly noticed public hearing as prescribed by law to consider the Specific Plan Amendment and LCPA; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the City Council considered all factors relating to SPA13-0001 and LCPA 13-00012; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Dana Point as follows:

- A. That the above recitations are true and correct;
- B. The Specific Plan Amendment is attached hereto as Exhibit "A" and incorporated herein by reference;
- C. That the proposed action complies with all other applicable requirements of state law and local Ordinances;

- D. That the Specific Plan Amendment SPA13-0001 is in the public interest;
- E. The preparation and adoption of the Local Coastal Program Amendment is statutorily exempt from the California Environmental Quality Act, pursuant to Section 21080.9 of the Public Resources Code;
- F. The proposed amendment to the Dana Point Specific Plan is consistent with the General Plan;
- G. The City Council adopt Specific Plan Amendment SPA13-0001 for the reasons outlined herein including but not limited to: requiring the owners of short term rentals to obtain a City issued permit authorizing such use in a manner provided by Chapter 5.38 of the Municipal Code to safeguard the peace, safety and general welfare of the residents of Dana Point and their visitors and guests by eliminating excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse related to short-term rentals;
- H. That the City Council adopt the following findings:
 - 1. That the public and affected agencies have had ample opportunity to participate in the LCPA process. **Proper notice in accordance with the LCP Amendment procedures has been followed.**
 - 2. That all policies, objectives, and standards of the LCPA conform to the requirements of the Coastal Act, including that the Land Use Plan is in conformance with and adequate to carry out the Chapter Three policies of the Coastal Act. **The amendments to the Dana Point Specific Plan are consistent with the Coastal Act policies that encourage coastal access and preservation of coastal and marine resources.**
 - 3. That Coastal Act policies concerning specific coastal resources, hazard areas, coastal access concerns, and land use priorities have been applied to determine the kind, locations, and intensity of land and water uses. **As a Specific Plan Amendment, no specific development is proposed.**
 - 4. That the level and pattern of development proposed is reflected in the Zoning Code. **The applicable sections are**

being amended accordingly to be consistent with state law.

5. That a procedure has been established to ensure adequate notice of interested persons and agencies of impending development proposed after certification of the LCPA. **Proper notice in accordance with the LCP Amendment procedures has been followed.**
 6. That zoning measures are in place which are in conformance with and adequate to carry out the coastal policies of the Land Use Plan. **The City's Dana Point Specific Plan is being amended concurrently with the LCP amendment.**
- I. That the City Council includes the following findings submitting the LCPA to the Coastal Commission:
1. The City certifies that with the adoption of these amendments, the City will carry out the Local Coastal Program in a manner fully in conformity with Division 20 of the Public Resources Code as amended, the California Coastal Act of 1976.
 2. The City include the Specific Plan Amendment in its submittal to the Coastal Commission and state that the amendment to the Local Coastal Plan is to the implementing actions only.
 3. The City certifies that the Land Use Plan, is in conformity with and adequate to carry out the Chapter Three policies of the Coastal Act in that no changes are proposed to the Land Use Plan.
 4. The City certifies the implementing actions as amended, are in conformity with and adequate to carry out the provisions of the certified Land Use Plan.
 5. The Ordinance of the City Council include the Specific Plan Amendment, and Local Coastal Program Amendment numbers SPA13-0001 and LCPA13-0002 when submitted to the Coastal Commission.

6. The City certifies that the amendments will be submitted to the Coastal Commission for review and approval as an Amendment to the Local Coastal Program.


- J. That the City Council adopts the amendments to the Dana Point Specific Plan as follows:

The allowance of short term rentals shall be added in Section XI-Land Use Regulations; sub-section v – “Special Regulations and Information” of the Dana Point Specific Plan as shown in the attached “Exhibit A”. This amendment to the Dana Point Specific Plan constitutes the LCPA.

- K. That the City Council adopts Specific Plan Amendment SPA13-0001, which would amend the Local Coastal Program pursuant to LCPA13-0002. The City Council approves the amendment for the reasons outlined herein, including but not limited to: requiring the owners of short term rentals to obtain a City issued permit authorizing such use in a manner provided by Chapter 5.38 of the Municipal Code to safeguard the peace, safety and general welfare of the residents of Dana Point and their visitors and guests by eliminating excessive noise, disorderly conduct, vandalism, overcrowding, traffic congestion, illegal vehicle parking, and the accumulation of refuse related to short-term rentals.


If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

PASSED, APPROVED, AND ADOPTED this 6th day of September, 2016



JOHN A. TOMLINSON, MAYOR

ATTEST:



KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

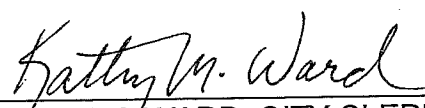
I, KATHY WARD, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 16-07 was duly introduced at a regular meeting of the City Council on the 17th day of May, 2016, and was duly adopted and passed at a regular meeting of the City Council on the 6th day of September, 2016, by the following vote, to wit:

AYES: Council Members Olvera, Schoeffel and Mayor Tomlinson

NOES: Council Member Muller and Mayor Pro Tem Viczorek

ABSTAIN: None

ABSENT: None



KATHY M. WARD, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

AFFIDAVIT OF POSTING
AND PUBLISHING

KATHY WARD, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 16-07, being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING SPECIFIC PLAN AMENDMENT SPA13-0001 TO ALLOW SHORT TERM RENTALS IN ALL THE DISTRICTS WHERE RESIDENTIAL USES ARE ALLOWED WITHIN THE SPECIFIC PLAN'S BOUNDARIES, AND SUBMISSION AS PART OF LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0002 FOR APPROVAL AND CERTIFICATION BY THE CALIFORNIA COASTAL COMMISSION.

was published in summary in the Dana Point News on the 26th day of May, 2016, and the 15th day of September, 2016, and, in further compliance with City Resolution No. 91-10-08-1, on the 19th day of May, 2016, and the 8th day of September, 2016, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

Dana Point City Hall
Capistrano Beach Post Office
Dana Point Post Office
Dana Point Library

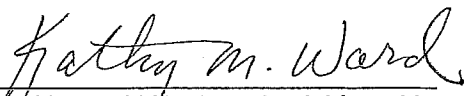

KATHY M. WARD, CITY CLERK
Dana Point, California

Exhibit "A"

The Dana Point Specific Plan; ~~Section XI Land Use Regulations; Section v — "Special Regulations and Information"~~ Section E. Coastal Land Use District Regulations is amended to include the following new sub-section 16.

Short Term Rentals: Short term rentals, as defined in Chapter 5.38 of the City of Dana Point's Municipal Code, are allowed in all the districts within the Dana Point Specific Plan where residential uses are allowed, including but not limited to detached single-family dwellings, condominiums, duplexes, triplexes, townhomes and multiple-family dwellings. No owner of a short term rental shall offer to rent, or advertise for rent the short term rental to another person without a valid short-term rental permit approved and issued by the City of Dana Point, as stipulated in Chapter 5.38 of the City's Municipal Code. Chapter 5.38 of the City of Dana Point Municipal Code (Short-Term Rental Permits) is part of the City's certified Local Coastal Program. Any change(s) that limit or prohibit short term rentals in the coastal zone, as determined by the Executive Director of the Coastal Commission, shall be submitted to the Coastal Commission for certification as a Local Coastal Program Amendment.

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



April 28, 2016

City of Dana Point
Community Development
Attn: Ursula Luna-Reynosa, Director
33282 Golden Lantern
Dana Point, CA 92629-1805

Re: City of Dana Point Local Coastal Program Amendment No. 1-14 (LCP-5-DPT-14-0105-1).

Dear Ms. Luna-Reynosa:

You are hereby notified that the California Coastal Commission, at its April 14, 2016 meeting in Santa Rosa, approved City of Dana Point Local Coastal Program (LCP) Amendment No. 1-14 with suggested modifications. LCP Amendment Request No. 1-14 (LCP-5-DPT-14-0105-1) amends the City's Zoning Code Ordinance, which is the Implementation Plan (IP) for the '1996' LCP, and the Dana Point Specific Plan Local Coastal Program Implementation Plan (IP) ('1986' LCP) to allow short-term rentals in all the Zoning Districts where residential uses are allowed, subject to the criteria listed in Chapter 5.38 of the City's Municipal Code.

The Commission approved the LCP Amendment with suggested modifications. Thus, the Amendment will become final once: 1) the City of Dana Point City Council adopts the Commission's suggested modifications, 2) the City of Dana Point City Council forwards the adopted suggested modifications to the Commission by Resolution, and, 3) the Executive Director certifies that the City has complied with the Commission's April 14, 2016 action. The Coastal Act requires that the City's adoption of the suggested modifications be completed within six (6) months of the Commission's action.

Pursuant to the Commission's action on April 14, 2016, certification of the City of Dana Point Local Coastal Program Amendment No. 1-14 is subject to the attached Suggested Modifications (Attachment "A").

Thank you for your cooperation and we look forward to working with you and your staff in the future. Please call Fernie Sy or myself at (562) 590-5071 if you have any questions regarding the modifications required for effective Certification of City of Dana Point Local Coastal Program Amendment No. 1-14.

Sincerely,

A handwritten signature in dark ink, appearing to read "C. Posner", written over a horizontal line.

Charles Posner
Supervisor of Planning

Attachment: Attachment "A" Suggested Modifications

Attachment "A" Suggested Modifications

Certification of City of Dana Point Local Coastal Program Amendment No. 1-14 is subject to the following modifications.

Text added by the suggested modification is ***bold, italicized and underlined***, and text suggested to be deleted is ~~struck through~~.

A. Suggested Modification to the Dana Point Specific Plan '1986' LCP

The Dana Point Specific Plan; ~~Section XI Land Use Regulations; Section v—"Special Regulations and Information"~~ ***Section E. Coastal Land Use District Regulations*** is amended to include the following new sub-section ***16.*** (Inserts are underlined):

16:

Short Term Rentals

~~D.~~ Short Term Rentals: Short term rentals, as defined in Chapter 5.38 of the City of Dana Point's Municipal Code, are allowed in all the districts within the Dana Point Specific Plan where residential uses are allowed, including but not limited to detached single-family dwellings, condominiums, duplexes, triplexes, townhomes and multiple-family dwellings. No owner of a short term rental shall offer to rent, or advertise for rent the short term rental to another person without a valid short-term rental permit approved and issued by the City of Dana Point, as stipulated in Chapter 5.38 of the City's Municipal Code. ***Chapter 5.38 of the City of Dana Point Municipal Code (Short-Term Rental Permits) is part of the City's certified Local Coastal Program. Any change(s) that limit or prohibit short term rentals in the coastal zone, as determined by the Executive Director of the Coastal Commission, shall be submitted to the Coastal Commission for certification as a Local Coastal Plan Amendment.***

B. Suggested Modification to the '1996' LCP Implementation Plan

Chapter 9.07

SPECIAL USE STANDARDS

Section 9.07.260 Short Term Rentals

Short term rentals, as defined in Chapter 5.38 of the City's Municipal Code, are allowed in all the zoning districts where residential uses are allowed, including, but not limited to detached single-family dwellings, condominiums, duplexes, triplexes, townhomes and multiple-family dwellings. No owner of a short term rental shall offer to rent, or advertise for rent the short term rental to another person without a valid short-term rental permit approved and issued by the City, as stipulated in Chapter 5.38 of the Municipal Code. ***Chapter 5.38 of the City of Dana Point Municipal Code (Short-Term Rental Permits) is part of the City's certified Local Coastal Program. Any change(s) that limit or prohibit short term rentals in the coastal zone, as determined by the Executive Director of the Coastal Commission, shall be submitted to the Coastal Commission for certification as a Local Coastal Plan Amendment.***