

CITY OF DANA POINT
AGENDA REPORT

Reviewed By:	
DH	<u>X</u>
CM	<u>X</u>
CA	

DATE: JULY 19, 2016

TO: CITY MANAGER/CITY COUNCIL

FROM: URSULA LUNA-REYNOSA, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: SECOND READING AND ADOPTION OF ORDINANCE WITH CALIFORNIA COASTAL COMMISSION SUGGESTED MODIFICATIONS TO THE CITY'S APPROVED ZONE TEXT AMENDMENT ZTA13-0001, LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0001; SPECIFIC PLAN AMENDMENT SPA13-0001, AND LOCAL COASTAL PROGRAM AMENDMENT LCPA13-0002 TO AMEND THE CITY'S ZONING ORDINANCE AND THE DANA POINT SPECIFIC PLAN TO ALLOW SHORT TERM RENTALS IN ALL ZONING DISTRICTS WHERE RESIDENTIAL USES ARE ALLOWED.

RECOMMENDED ACTION:

That the City Council hold a second reading and adopt suggested modifications as approved by the California Coastal Commission in its certification of the City of Dana Point Local Coastal Program Amendment LCPA13-0001 and LCPA13-0002 and forward the adopted suggested modifications to the Coastal Commission for final certification, and

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 (ACTION DOCUMENT A); and

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 (ACTION DOCUMENT B).

APPLICANT: City of Dana Point

ISSUES:

1. Is the proposal consistent with the goals and policies of the Dana Point General Plan, the Dana Point Zoning Ordinance, and the Dana Point Specific Plan?
2. Will the project resulting from the modifications be generally consistent with the City Council's intent when it previously approved the project?
3. Is the proposal consistent with the Local Coastal Program Amendment procedures as set forth in Dana Point Zoning Ordinance, Section 9.61.080?
4. Will the Coastal Commission's suggested modifications bring the amendments into conformity with the requirements and policies of the Coastal Act and allow Coastal Commission certification of the City's Local Coastal Program.

BACKGROUND:

At a regular meeting held on May 17, 2016, the City Council introduced and conducted the first reading of an Ordinance with California Coastal Commission suggested modifications to the City's approved Zone Text Amendment ZTA13-0001, Local Coastal Program Amendment LCPA13-0001; Specific Plan Amendment SPA13-0001, and Local Coastal Program Amendment LCPA13-0002 to amend the City's Zoning Ordinance and the Dana Point Specific Plan to allow Short Term Rentals in all Zoning Districts where residential uses are allowed.

In order to establish an administrative permit program to allow and regulate short term rentals in the City, the City Council adopted a Short Term Rentals Ordinance on April 2, 2013. Short term rentals are residences which are rented for 30 consecutive days or less, typically for one-week intervals or weekend stays. Residences rented for one month or longer are not considered short term rentals. Previous to the City's approval of Short Term Rentals, the use was not identified in the City's Zoning Ordinance and the Specific Plan and, therefore, the specific use was considered to be prohibited.

As a follow-up to the Council's approval and adoption of the Short Term Rental Ordinance, the City Council amended the City's Zoning Ordinance and the Dana Point Specific Plan (DPSP) to allow this use in all the zoning districts where residential uses are allowed. This action also encompasses a Local Coastal Program Amendment (LCPA) as it affects all residential properties located within the City's Coastal Overlay District.

Following is a chronology of previous actions taken by the City and the California Coastal Commission:

- The City Council adopted a Short Term Rentals Ordinance on April 2, 2013, (Chapter 5.38 of the Municipal Code) to establish an administrative permit program to allow and regulate short term rentals in the City.

- The Planning Commission conducted a public hearing on October 28, 2013 recommending that the City Council approve a Zone Text Amendment, Specific Plan Amendment, and Local Coastal Program Amendments to allow Short Term Rentals.
- At a regular meeting held on December 3, 2013, the City Council introduced and conducted the first reading of the two ordinances amending the Dana Point Zoning Code and the Dana Point Specific Plan.
- At the regular meeting held on January 21, 2014, the City Council conducted a second reading of the two ordinances amending the Dana Point Zoning Code and the Dana Point Specific Plan and authorizing the staff to submit the proposed LCPA to the Coastal Commission for its approval and certification.
- The LCPA was submitted to the California Coastal Commission on January 29, 2014.
- On March 20, 2015, after review of the City's submittal of additional information that Commission staff had requested, the LCP amendment submittal was deemed complete by Coastal Commission staff.
- On May 13, 2015, the Coastal Commission authorized a one-year extension for action on the LCP Amendment request.
- At its meeting of April 14, 2016, the California Coastal Commission conducted a hearing and approved the City's LCPA with suggested modifications.

DISCUSSION:

Because the Coastal Commission approved the LCPA with suggested modifications, the next step in the approval process to allow short term rentals in Dana Point is the City Council's adoption of the suggested modifications by the Coastal Commission.

The modifications suggested by the Coastal Commission are intended to bring the proposed project into conformity with the requirements and policies of the Coastal Act. To the point, the suggested modifications very simply make the City's Municipal Code Chapter 5.38 (Short Term Rental Permits) part of the City's Local Coastal Program so that any future amendments to the Chapter 5.38 that limit or prohibit short term rentals in the coastal zone be submitted to the Coastal Commission as a Local Coastal Plan Amendment (LCPA).

Initially, Coastal Commission staff had included that any actions that "modify, limit or prohibit" short term rentals in the coastal zone be subject to a LCPA. City staff pointed out that this is a new ordinance and that the contents of the ordinance may need to be adjusted in ways that do not limit or prohibit short-term rentals, and that such changes should not rise to the level of an LCPA. For example, changes to Chapter 5.38 that affect the tax rate or filing fee for short-term rental permits, the requirement for providing a set amount of insurance, or the violations/penalties section of the ordinance would not need a LCPA since these changes would not alter the intent of the amendment to provide visitor-serving overnight accommodation in the coastal zone. Also, the revocation of individual short term rental permits as a way to address violations would also not require a LCPA.

On the other hand, any changes to Chapter 5.38 that would limit or prohibit short-terms rentals in the coastal zone, such as changing the location where short-term rentals are allowed, changing the minimum number of nights required for a short-term rental use, or changing the number of vehicles allowed at a short-term rental, etc., would necessitate LCPA. Therefore, any change that limits or prohibits short-term rentals in the coastal zone

shall require a LCPA, but changes that modify the City's ordinances but do not limit or prohibit short term rentals in the coastal zone would not require Commission certification. The Executive Director shall determine whether any change made by the City requires Commission certification.

The LCPA will become final once: 1) the City adopts the Commission's suggested modifications, 2) the City forwards the adopted suggested modifications to the Coastal Commission by Resolution, and, 3) the Executive Director of the Coastal Commission certifies that the City has complied with the Commission action.

CONCLUSION:

Overall, the suggested modifications are relatively minor and importantly do not change the integrity or substance of the proposed ordinances, as originally approved by the City Council. City staff is supportive of the final modification language that allows certain, future amendments to the ordinance that do not limit or prohibit short term rentals in the coastal zone without Commission certification.

In circumstances where the Coastal Commission makes suggested modifications, those modifications can only be accepted or rejected in total, without any proposed revisions. After the City Council's adoption of the suggested modifications, the adopted modifications will be forwarded to the Coastal Commission for final certification.

Therefore, it is recommended that the City Council approve and adopt the attached resolutions and ordinances approving the Zone Text Amendment, Specific Plan Amendment and two Local Coastal Program Amendments.

NOTIFICATION:

Notice for the proposed action was published in the Dana Point News on or before May 7, 2016. Notices were posted on or before May 7, 2016, at Dana Point City Hall, the Dana Point Post Office, the Capistrano Beach Post Office, and the Dana Point Library.

FISCAL IMPACT:

No negative fiscal impacts are anticipated.

STRATEGIC PLAN IMPLEMENTATION:

In compliance with the Strategic Plan Initiative to evaluate land use issues to ensure goals, policies and programs of the General Plan reflect the community vision and mission, the proposed action supports and policy as set forth previously by the City Council. The project also improves the City's Local Coastal Program, Dana Point Specific Plan and Zoning Ordinance by allowing opportunities for additional lodging choices for the visitors to the City.

ACTION DOCUMENTS:

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A. [Draft Zone Text Amendment Ordinance No. 16-XX](#)..... 6
B. [Draft Specific Plan Amendment Ordinance No. 16-XX](#) 14
C. [Response Memorandum to Public Testimony](#).....22

ACTION DOCUMENT A: Draft Zone Text Amendment Ordinance No. 16-XX**ORDINANCE NO. 16-05-17-xx**

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

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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;

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- 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.**

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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:

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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.

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PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2016

John A. Tomlinson, MAYOR

ATTEST:

KATHY 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-xx was duly introduced at a regular meeting of the City Council on the ____ day of _____, 2016, and was duly adopted and passed at a regular meeting of the City Council on the ____ day of _____, 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

KATHY WARD, CITY CLERK

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ORDINANCE NO. 16-xx

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-xx, 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 ___ day of _____, 2016, and in further compliance with City Resolution No. XX-XX-XX-XX on the ___ day of _____, 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

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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, modify 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.

ACTION DOCUMENT B: Draft Specific Plan Amendment Ordinance No. 16-XX**ORDINANCE NO. 16-05-17-xx**

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

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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 13-0002; 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;

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- 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**

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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.

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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.

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PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2016

John A. Tomlinson, MAYOR

ATTEST:

KATHY 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-xx was duly introduced at a regular meeting of the City Council on the ____ day of _____, 2013, and was duly adopted and passed at a regular meeting of the City Council on the ____ day of _____, 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

KATHY WARD, CITY CLERK

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ORDINANCE NO. 13-xx

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-xx, 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 ___ day of _____, 2016, and in further compliance with City Resolution No. XX-XX-XX-XX on the ___ day of _____, 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

Ordinance No. 16-05-17-XX
ZTA13-0001/LCPA13-0001/SPA13-0001/LCPA13-0002
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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. 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, modify 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.

ACTION DOCUMENT C: Response Memorandum to Public Testimony**CITY OF DANA POINT****Community Development Department
Memorandum**

To: Mayor and City Council Members
From: Ursula Luna-Reynosa, Community Development Director
Date: July 19, 2016
Subject: Short Term Rentals

Item #16 on the agenda for the June 21, 2016 City Council Meeting was the Second Reading of the Short-Term Rental Ordinance ("Ordinance"). A member of the public, Ms. Betty Hill, provided public testimony and raised questions related to the Ordinance as part of that testimony. The following is a transcript of Ms. Hill's testimony with staff's responses to the questions.

"I am concerned about what the Council intends to accomplish with this California Coastal Commission approval. I would appreciate some clarifications. It appears that the regulations would apply throughout Dana Point, so I don't understand why it requires Coastal Commission approval. Is it meant to apply only to the Coastal Zone including the Town Center area?"

Response: The Ordinance requires Coastal Commission approval because it applies citywide, and therefore applies to areas of the City that are in the Coastal Zone. The Dana Point Zoning Code is part of the City's certified Local Coastal Plan ("LCP"); therefore, anytime the City's Zoning Code is amended (unless the portion being amended does not affect the Coastal Zone) an amendment to the LCP ("LCPA") is required. When the City Council originally enacted the Ordinance in 2014, the Council intended the law to apply citywide because issues concerning short-term rentals were prevalent in many different areas of the City, not just areas in the Coastal Zone.

"The first public hearing on the Ordinance was held years ago on December 3, 2013, so there doesn't appear to be an urgency. It was just submitted to the California Coastal Commission on May 17, 2016. And, that's when Measure H was before the voters. Is this intended to override the Measure H requirements? Is there some reason for it being submitted at this time?"

Response: Publicly noticed City Council discussions on the short-term rental subject began in January 2007. The topic has been discussed in properly noticed City Council meetings 14 times from 2007 to date, and at three Planning Commission meetings. The regulation of short-term rentals has been one of the most publicly debated matters



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before the City Council in the past decade, and the topic received a substantial amount of coverage in both the Dana Point Times and the Orange County Register.

The permitting and regulation of short-term rentals required establishing a permit program, changing the City Zoning Code, and amending the LCP. The City began issuing the short-term rental permits in 2014 so it could begin regulating short-term rentals to promote safer housing for renters and reduce the number of problems that were being reported about short-term rentals throughout the City.

Measure H had, and has, no bearing on the Ordinance and the resultant LCPA. The LCPA process associated with the Ordinance was initiated long before the Measure H qualification process began in 2015. City staff submitted the LCPA application to Coastal Commission staff on January 29, 2014, shortly after the City Council's second reading of the Ordinance. Coastal Commission staff requested additional information and an iterative process followed with Coastal Commission staff deeming the City's LCPA application complete over one year later on March 20, 2015. At that time, Coastal Commission staff lacked sufficient time to review the materials and conduct a timely hearing on the City's LCPA application and therefore recommended a one-year extension to allow additional time for review. A Coastal Commission hearing on the LCPA was scheduled for April 14, 2016, and at that hearing the Commission proposed certain modifications to the Ordinance. Amendment of the Ordinance to incorporate the Coastal Commission's proposed modifications required City Council action at first and second readings of the amended Ordinance. Those Council hearings occurred in May and June 2016, but at the June 2016 meeting the Council chose to continue the second reading until its regular meeting on July 19, 2016.

The Ordinance, as amended to include the Coastal Commission modifications, is not intended to override Measure H requirements and is not in conflict with any provisions of Measure H. The effort to allow short-term rentals in all residential zoning districts, except where explicitly prohibited by homeowner association CC&R's, commenced long before the effort to qualify Measure H for the ballot began.

A brief history of formal actions is as follows:

- The City Council adopted the Ordinance on April 2, 2013, (Chapter 5.38 of the Municipal Code) to establish an administrative permit program to allow and regulate short-term rentals in the City.
- The Planning Commission conducted a public hearing on October 28, 2013 recommending that the City Council approve a Zone Text Amendment, Specific Plan Amendment, and Local Coastal Program Amendments to allow short-term rentals.
- At its regular meeting held on December 3, 2013, the City Council introduced and conducted the first reading of the two ordinances amending the Dana Point Zoning Code and the Dana Point Specific Plan.



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- At its regular meeting held on January 21, 2014, the City Council conducted a second reading of the two ordinances amending the Dana Point Zoning Code and the Dana Point Specific Plan and authorizing the staff to submit the proposed LCPA to the Coastal Commission for its approval and certification.
- The LCPA was submitted to the California Coastal Commission on January 29, 2014.
- On March 20, 2015, after review of the City's submittal of additional information that Coastal Commission staff had requested, the LCPA submittal was deemed complete by Coastal Commission staff.
- On May 13, 2015, the Coastal Commission authorized a one-year extension for action on the LCPA request.
- At its meeting of April 14, 2016, the California Coastal Commission conducted a hearing and approved the City's LCPA with suggested modifications.

"The amendment is short on some important details. It allows short-term rentals in all the zoning districts where residential uses are allowed. And, of more concern, provides visitor-serving overnight accommodations in the Coastal Zone. Is the intent to allow hotel-like projects in Town Center? Are we going to be creating a tourist district? Isn't the overnight provision unusual for vacation rentals when maybe a three (3) night minimum would be more reasonable?"

Response: The Ordinance amendment is very clear and detailed as to its intent and purpose. The intent is and was not to allow hotel-like projects in Town Center, but to regulate short-term rental of residential properties. The Ordinance applies everywhere in the City, not just in Town Center. The overnight provision was also debated at length with Coastal Commission staff during the LCPA process; the requirement of a two-night minimum was the compromise. The Coastal Commission staff continually pressed for a one-night minimum, but the City took a hard line to maintain the two-night minimum requirement.

The City's Zoning Code is what is known as "permissive," which means that a use must be expressly allowed in the Zoning Code, or else that use is not legally permitted. Before the Ordinance was enacted, the City's Zoning Code did not have a provision allowing short-term rentals; therefore, the short-term rentals of residential properties was unpermitted and illegal. However, many owners have rented their residential properties on a short-term basis—some for over 50 years--in spite of the fact that such activity was illegal. In numerous instances these illegal short-term rental activities were reported to negatively impact surrounding neighborhoods, which gave rise to the public controversy over short-term rentals.

During the years of public debate over short-term rentals, it was obvious that the community was deeply split between those advocating expansion of property rights by allowing short-term rentals, and those who felt that short-term rentals should continue to be disallowed. The City Council ultimately chose a compromise in the form of an



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ordinance that included the ability to quickly and effectively regulate short-term rentals by putting rules in place to mitigate impacts that could be associated with short-term rentals. Moreover, the cost to enforce this ordinance would be paid for by transient occupancy taxes collected from short-term rentals. The City Council also included provisions that if a homeowner association's CC&R's prohibit short-term rentals then the City will not issue a permit for those properties.

The Coastal Commission has historically been a strong advocate of short-term rentals as it believes these housing arrangements provide more affordable opportunities for the public to visit the coast. Coastal Commission staff also did not want to allow the "private" prohibition of short-term rentals by homeowner association CC&R's and were clear during LCPA discussions that they believe that any prohibition or limitation of short-term rentals, including geographical buffers to limit the concentration of short term-rental properties, violates the Coastal Act.

The intent of the Ordinance is not to allow hotel-like projects, and there is not a tourist district being created by this Ordinance. This Ordinance simply allows the City to regulate this activity to ensure that property owners who decide to rent their residential properties on a short-term basis do so in a responsible and safe manner that does not negatively impact their neighbors.

"The ramifications could be huge by increasing rents in the Dana Point housing market as property owners switch to more profitable short-term rentals. Did you see the article in the LA Times today about the serious problems of evictions to create short-term rentals in LA? The situation is different, but the idea is that property owners might be inclined not to rent to people other than as short-term rentals."

Response: It is difficult to predict the relationship between short-term rentals and a decrease in the supply of the long-term rental housing stock. Low-income housing advocates are very much opposed to consumption of housing supply by short-term rental operators. However, one could also argue that higher rents, whether they are derived from short-term or long-term rentals, result in higher property values.

"There are no provisions in this to mitigate future problems regarding short-term rentals. Is there any way to include some safety features such as the ability to limit the number of vacation rentals allowed in the neighborhood, because this really does affect the neighborhoods, much like the recovery homes? The HOA's have their own rules, it doesn't really mention that. What protection do neighborhoods without associations have from being overrun by short-term rentals? I know you allow property owners on streets, for example to adopt preferential parking districts. Maybe there is some way to allow residents on different streets/communities to vote on that as well."

Response: The Ordinance permits revocation of a permit if the property owner is not managing their short-term rental in a responsible way in compliance with the Ordinance.



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The Ordinance further provides the City with the significant protections of allowing for imposition of progressive monetary penalties and facilitating easy revocation of short-term rental permits where justified by the circumstances. It is important to note that such enforcement tools were unavailable before the Ordinance was enacted when property owners still engaged in illegal short-term rental activities on a widespread basis. It was far more difficult, expensive and time-consuming for the City to identify and shut down problematic short-term rental uses before the Ordinance took effect. Since the Ordinance was enacted in 2014 and regulation of short-term rentals began, the number of resident complaints about short-term rentals has dramatically fallen, which is the best evidence that the Ordinance is doing exactly what it was intended to do: provide safer and more responsible short-term residential rental use within the City.

As mentioned above, discussions with Coastal Commission staff revealed their strong reluctance to support any kind of limitations on short-term rentals such as "buffer zones". The Ordinance does specifically address the right of homeowner associations to choose whether to allow short-term rental uses within their private jurisdictions. If association CC&R's expressly prohibit short-term rentals then the City will not issue a permit within the homeowner association's project area. Once this Ordinance becomes codified, the protection for neighborhoods that are not subject to private CC&Rs prohibiting short-term rental use would be to be vigilant in reporting irresponsible short-term rental operators to the City. In the past two years since the City began regulating short-term rental uses under the Ordinance, City code enforcement staff has only received a handful of such complaints. The Ordinance is working and is working very well.

"The City Council needs to explain clearly to Dana Point residents what its intent here and the advantage to our community of adopting this particular amendment at this time. Thank you."

Response: The intent of the Ordinance, as amended to incorporate the Coastal Commission modifications, is to regulate the widespread practice of renting residential units on a short-term basis that is going to occur whether the City permits or prohibits such activity. The community is benefitted in that the Ordinance gives the City effective tools to ensure that short-term rental uses are managed in a safe and responsible manner that does not negatively impact surrounding properties and neighborhoods. If there are complaints registered about short-term rentals, the City now has authority under the Ordinance to resolve these complaints in an efficient and effective manner, reducing the time and cost of enforcement as well as the adverse effects on neighborhoods. The community is further advantaged by the fact that the Ordinance allows the many neighborhood communities throughout the City that are governed by homeowner associations with CC&Rs to privately disallow short-term rental uses within their projects.

Copy: Doug Chotkevys, City Manager