

**FULL TEXT OF MEASURE V
CITY OF SAN CLEMENTE**

AN ORDINANCE AMENDING THE LAND USE ELEMENT OF THE CITY OF SAN CLEMENTE GENERAL PLAN TO REQUIRE CITY VOTER APPROVAL OF GENERAL PLAN AMENDMENTS, SPECIFIC PLAN AMENDMENTS, SPECIFIC PLAN ADOPTIONS AND ZONING AMENDMENTS THAT CHANGE THE PERMITTED USES OF OPEN SPACE LANDS TO NON-OPEN SPACE USES

WHEREAS, the Land Use Element of the City of San Clemente General Plan identifies various classifications of permitted uses for the real property located within the City and the City's sphere of influence and includes a Land Use Plan Map which designates the permitted land uses for all such areas; and

WHEREAS, among the General Plan land use classifications are five (5) classifications for open space uses, designated OS 1, OS 2, OS 3, OSC, and OSR, respectively (collectively, the "General Plan Open Space Classifications"); and

WHEREAS, pursuant to applicable California law, including without limitation Government Code Sections 65860 and 65454, the City's zoning and any adopted specific plans are required to be consistent with the City's General Plan; and

WHEREAS, the City of San Clemente Zoning Ordinance set forth in Chapter 17 of the Municipal Code of the City of San Clemente and the adopted Pier Bowl, Forster Ranch, Marblehead Coastal, Marblehead Inland, Rancho San Clemente, Talega, and West Pico Corridor Specific Plans (collectively, the "Specific Plans") implement the City's General Plan, establish zones and planning areas within which various land uses are permitted, and incorporate an official zoning map and specific plan maps designating the permitted land uses for all such areas; and

WHEREAS, among the zones set forth in the City's Zoning Ordinance are eight (8) zones for open space uses, designated OS 1 (Public Parks and Publicly Owned Open Space), OS S1 (Publicly Owned Open Space—Shoreline), OS 2 (Privately Owned Open Space), OS S2 (Privately Owned Open Space—Shoreline), OS 3 (Privately Owned Open Space (Restricted by Easement)), OSC (Golf Courses and Commercial Recreation), S-1 (Shoreline District, applicable within the North Beach Study Area), and O-A (Open Area and Recreation District, applicable within the North Beach Study Area), respectively (collectively, the "Open Space Zones"); and

WHEREAS, each property in the City that is designated as being located within one of the General Plan Open Space Classifications has been placed within the corresponding Open Space Zone or has been designated within the applicable Specific Plan for similar open space uses (the "Specific Plan Open Space Areas"); and

WHEREAS, the properties within the City and the City's sphere of influence located within one or more of the designated General Plan Open Space Classifications, Open Space Zones, or Specific Plan Open Space Areas as of the date this Ordinance becomes effective are collectively referred to herein as the "Open Space Areas"; and

WHEREAS, on September 18, 2007, the City Council adopted its Resolution No. 07-68 amending the General Plan to require City voter approval prior to the redesignation of Open Space to non-Open Space uses; and

WHEREAS, in adopting Resolution No. 07-68, the City Council found that long-term preservation of the City's Open Space Areas promotes the health, safety, welfare, and quality of life for the residents of San Clemente for the following reasons:

1. It is important to the unique character of San Clemente and the quality of life of its residents to protect the significant environmental, aesthetic, and recreational benefits that the designated Open Space Areas provide to the community; and
2. The existing City General Plan Land Use Element goals, objectives, policies, and implementation programs relating to the City's Open Space Areas set forth a rational plan for development, which balances residential and commercial land uses with the provision of park, recreation, and open space land; and
3. Proposals to convert Open Space Areas to Non-Open Space Uses can have adverse environmental impacts, including without limitation aesthetic, traffic, air quality, and noise impacts and loss of natural and native habitat; and

WHEREAS, the City Council further found in adopting Resolution No. 07-68 that the long-term preservation of the Open Space Areas is a matter of concern to the community and the City Council desired to assure the residents of San Clemente that Open Space Areas will not be converted to Non-Open Space Uses without the approval of the City's voters, subject to certain exceptions set forth herein; and

WHEREAS, on January 22, 2008, the City Council voted to submit to the City's voters at the general municipal election to be held on November 4, 2008, the General Plan Amendment adopted in Resolution No. 07-68 in order to further assure the residents of San Clemente that a future City Council would not be able to remove from the City's General Plan the voter approval requirement set forth in Resolution No. 07-68;

NOW, THEREFORE, THE PEOPLE OF THE CITY OF SAN CLEMENTE ORDAIN AS FOLLOWS:

SECTION 1. A new Policy number 1.9.18 is hereby added to Section IV.A.9 of the Land Use Element of the City's General Plan to read in its entirety as follows:

Voter Approval Required

1.9.18 Require voter approval of all General Plan Amendments, Specific Plan Amendments, Specific Plan adoptions, and Zoning Amendments that change the permitted uses of open space lands to non-open space uses, as more specifically described in Section V.Y. (I 1.26)

SECTION 2. A new Section V.Y., entitled "General Plan Amendments, Specific Plan Amendments, Specific Plan adoptions, and Zoning Ordinance Amendments to Convert Open Space Areas to Non-Open Space Uses," is hereby added to the Land Use Element of the City's General Plan to read in its entirety as follows:

I 1.26 Except as expressly provided hereinbelow no amendment to the City's General Plan, any adopted Specific Plan, or the City's Zoning Ordinance, that reclassifies all or any portion of any publicly owned or privately owned Open Space Area to Non-Open Space Uses and no new Specific Plan or zone change that reclassifies all or any portion of any publicly owned or privately owned Open Space Area to Non-Open Space Uses shall be effective until such General Plan amendment, Specific Plan amendment, Zoning Ordinance amendment, Specific Plan adoption, or zone change, as applicable, has been submitted to and approved by the City's voters at a general or special municipal election. As used herein, the term "Open Space Areas" shall include all areas located within the City and the City's sphere of influence that have any of the following designations or classifications as of the effective date of City Council Resolution No. 07-68, as those designations or classifications are defined in the City's General Plan, the City's Zoning Ordinance, and/or the applicable Specific Plan as of said date: (a) the OS 1, OS 2, OS 3, OSC, and OSR classifications set forth in Table 1-3 of the Land Use Element of the General Plan; (b) the OS 1, OS S1, OS 2, OS S2, OS 3, and OSC zoning categories listed in Section 17.08.010.E and Chapter 17.44 of the Municipal Code; (c) the S-1 and O-A zoning categories set forth in Sections 4.20 and 4.22 of the 1986 Zoning Ordinance governing the North Beach Study Area; and (d) the applicable provisions of the Specific Plans describing the areas to be set aside and reserved for open space in those plans. As used herein, the term "Non-Open Space Uses" shall mean any land uses that are not permitted or non-conditionally permitted uses within any of the Open Space Areas in accordance with Section 17.44.020 of the Municipal Code, the applicable sections governing designated open space areas within the Specific Plans and Sections of the 1986 Zoning Ordinance governing the North Beach Study Area as said Sections exist as of the effective date of City Council Resolution No. 07-68 and "Permitted Open Space Uses" shall mean any land uses that are permitted or conditionally permitted uses within any of the Open Space Areas in accordance with said Sections.

A General Plan amendment, Specific Plan amendment, Specific Plan adoption, or zone change reclassifying property from one open space classification to another open space classification shall not be subject to this Section V.Y and shall not require City voter approval as long as the reclassification does not authorize or permit Non-Open Space Uses in the applicable Open Space Area. In addition, an amendment or modification of a General Plan, Specific Plan, or Zoning Ordinance provision describing the permitted or prohibited uses within any of the Open Space Areas shall not be subject to this Section V.Y and shall not require City voter approval as long as the amendment or modification does not authorize or permit Non-Open Space Uses in any Open Space Area.

Notwithstanding the foregoing, a General Plan amendment, Specific Plan amendment, Zoning Ordinance amendment, Specific Plan adoption, or zone change that authorizes or permits Non-Open Space Uses in an Open Space Area shall not be subject to this Section V.Y and shall be permitted without City voter approval in the following circumstances only:

1. Upon the application of an affected landowner, if the City Council finds, based on substantial evidence, that the City's failure or refusal to reclassify the Open Space Area in question to a Non-Open Space Use would constitute an unconstitutional taking of the landowner's property; provided, however, that any such reclassification shall be made only to the extent necessary to avoid such an unconstitutional taking; or

2. Upon the application of an affected landowner to convert the Open Space Area to a residential use if the City Council determines that doing so is necessary to comply with federal or state law regarding the provision of housing. The City Council may do so only if it first makes each of the following findings based on substantial evidence in the record: (a) a specific provision of federal or state law requires the City to accommodate the proposed housing; (b) the amount of land to be reclassified is no greater than necessary to accommodate the required housing; (c) no alternative site within the City that is not an Open Space Area could be used to satisfy the applicable federal or state housing law; and (d) the proposed housing will be located adjacent to already developed lands and roads, unless locating the development in such areas would result in greater environmental impacts, would conflict with federal or state laws, or would not be feasible; or

3. To the extent not currently authorized in the applicable General Plan, Specific Plan, or Zoning Ordinance provisions applicable to a particular Open Space Area as of the effective date of Resolution No. 07-68, an amendment or modification to the class of authorized and permitted uses that authorizes or permits the construction, maintenance, and use of public roadways, public utilities, interpretive centers, amphitheatres, museums, public art, public facilities (including but not limited to structures for police, fire, and marine safety), active or passive recreational facilities, and facilities ancillary to the permitted Open Space Uses, including but not limited to parking facilities, lighting, signage, and public restrooms; or

4. To the extent the City Council determines, based on substantial evidence, that such reclassification is reasonably related to and required for either (a) a project for the stabilization of public or private buildings or property on adjacent land situated outside the Open Space Area that is being so reclassified; or (b) a project for the repair or restoration of damage to public or private buildings or property on adjacent land situated outside the Open Space that is being so reclassified; or

5. Upon the application of an affected landowner, the reclassification of an area of no more than one (1) acre in size, to the extent the City Council determines, based on substantial evidence, either that (a) the Open Space Area in question must be reclassified to authorize or permit a Non-Open Space Use in order to make it feasible for the landowner to develop or use the balance of his property or (b) reclassifying the Open Space Area in question to authorize or permit a Non-Open Space Use allows for a superior development alternative that benefits the public health, safety, or welfare; and provided that the one (1) acre maximum conversion of Permitted Open Space Uses to Non-Open Space Uses authorized under this clause 5 shall be calculated on a cumulative basis for each application; and provided that this exception shall not be applied if the primary reason for the application is to promote the economic feasibility of the project; or

6. As to a Specific Plan Amendment or Zoning Amendment only, to the extent that such Specific Plan or Zoning Amendment is required in order to be consistent with the City General Plan in effect as of the effective date of City Council Resolution No. 07-68.

SECTION 3. The provisions of this Ordinance are severable to the maximum extent permitted by law. The people hereby declare their intent that in the event any provision of this Ordinance is hereafter declared by a court of competent jurisdiction to be void, illegal, or unenforceable, the people would have adopted the remaining provisions set forth in this Ordinance, which therefore shall remain in effect and shall be enforceable.

SECTION 4. The City Clerk shall certify to the passage of this ordinance and enter it into the book of original ordinances, as and to the extent required under applicable law.