

ORDINANCE NO. 1003

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING THE EXISTING ACCESSORY DWELLING UNIT (ADU) PILOT PROGRAM BY IDENTIFYING ADDITIONAL INCENTIVES TO ENCOURAGE PROPERTY OWNERS TO CREATE DEED RESTRICTED ADUS AND JUNIOR ADUS AFFORDABLE TO LOWER INCOME HOUSEHOLDS IN ACCORDANCE WITH THE 6TH CYCLE HOUSING ELEMENT PROGRAM 2A

WHEREAS, Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JrADUs) are generally smaller dwelling units that provide for independent living as an accessory use on the same site as a larger primary dwelling unit or multiple dwelling unit development (i.e., duplex, apartments, or condominiums) subject to the regulations set forth in California Government Code Sections 65852.2 and 65852.22; and

WHEREAS, the City's certified Housing Element identifies a need to create at least 113 lower income units and at least 100 additional new opportunities to improve housing choice and affordability options for moderate income, lower income, and special needs households; and

WHEREAS, the Housing Element identifies use of an ADU Incentive Program as a priority strategy to integrate new affordable housing units throughout the City, with minimal impacts, consistent with the Del Mar Community Plan; and

WHEREAS, the City Council adopted the existing ADU Incentive Program on May 22, 2018, with extensions thereto adopted on June 1, 2020 and May 16, 2022, to encourage the creation of deed restricted affordable ADUs or JrADUs that the City can count towards the City's low income unit housing obligation; and

WHEREAS, the City's existing ADU Incentive Program has created only one low-income unit over a five-year period; and

WHEREAS, Housing Element Program 2A commits the City to consider and adopt new incentives by December 2023 to increase ADU Incentive Program participation to produce at least 15 low income ADUs by April 2029; and

WHEREAS, the new incentives will address the Housing Element Program 2A commitment and other related Housing Element strategies including Program 2B (Amnesty Program), Program 5A (Preservation of Existing Multi-Unit Housing), and Program 6B (Affirmatively Furthering Fair Housing) by creating new opportunities to improve housing choice and affordability options for moderate income, lower income, and special needs households; and

WHEREAS, one challenge in creating new incentives for the ADU Incentive Program has been that State law already provides generous incentives for ADU and JrADU development (i.e., streamlined, ministerial review process and minimum size

parameters) without an affordability requirement, particularly in single dwelling unit and two-unit zones; and

WHEREAS, on January 23, 2023, the City Council received a report with the findings of consultant studies that were completed to identify the financial feasibility related to construction of an ADU and how that relates to the likelihood of an owner choosing to build deed restricted low income units on their property; and

WHEREAS, on July 11, 2023, the Planning Commission held a public workshop to discuss potential incentives related to the ADU Incentive Program; and

WHEREAS, on September 12, 2023, the Planning Commission held a duly noticed public hearing and voted to recommend approval of the Ordinance to the City Council; and

WHEREAS, on December 4, 2023, the City Council held a duly noticed public hearing and voted to introduce the ADU Incentive Program Ordinance; and

WHEREAS, the amended ADU Incentive Program would slightly expand upon the existing incentives for single dwelling unit and two-unit zones and offer new incentives in multi-unit zones with greater economic feasibility to help offset the investment needed for creation of rent-restricted units with minimal impacts to the community consistent with the Del Mar Community Plan; and

WHEREAS, in single dwelling unit and two-unit/duplex zones any property owner that proposes to deed restrict a unit for rent to a lower income household would be eligible for one 500 square foot floor area ratio bonus and development of one bonus 500-square foot JrADU through the amended ADU Incentive Program; and

WHEREAS, in multi-unit zones the amended ADU Incentive Program would allow for an increase in the number of market rate ADUs that can be developed on a multi-unit lot as an incentive that would be awarded proportional to the number of low income units created in order to help offset the cost associated with creation of rent restricted units; and

WHEREAS, the exact income limit for lower income households is based on a combination of federal and state law whereby the United States Department of Housing and Urban Development (HUD) annually sets median family income (MFI) numbers to reflect its Section 8 income limits and changes thereto, and California's Department of Housing and Community Development then relies on the HUD MFI numbers to annually determine California's area median income (AMI) limits; and

WHEREAS, a lower income household is defined by State law as people or families whose gross income does not exceed 80 percent of AMI and includes low income, very low income, and extremely low income households; and

WHEREAS, an "Eligible Household" shall mean a household that has been determined to be eligible to be a tenant of the ADU as a lower income household; and

WHEREAS, "Affordable Rent" shall mean the maximum allowable rent for the Accessory Dwelling Unit, equal to one-twelfth (1/12th) of thirty percent (30%) of seventy percent (70%) of the Median Household Income, adjusted for assumed household size of two persons in a one-bedroom or three persons in a two-bedroom.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Del Mar, California, does hereby ordain as follows:

SECTION ONE:

An applicant for the ADU Incentive Program shall submit the City's universal development application and the Accessory Dwelling Unit application forms. The application forms shall identify the proposed development, including specification of the number of proposed deed restricted lower income units, identification of which units on-site are proposed as income restricted units, and identification of whether the units will be deed restricted for a minimum of 30 years or 55 years. Property owners who meet the requirements of the ADU Incentive Program commitment shall be granted incentives to help the owner offset the investment needed for creation of rent restricted units as set forth in Sections Two and Three of the Ordinance.

SECTION TWO:

The applicant shall demonstrate how the proposed development complies with the following provisions of the ADU Incentive Program applicable to proposed development in single dwelling unit and two-unit/duplex zones. Development is eligible where proposed on single dwelling unit lots in the R1-5, R1-5B, R1-10, R1-10B, R1-14, R1-40, and CVPP zones, and where proposed on lots that allow duplex development in the R2, RM-West, RM-Central, and RM-East zones.

In single dwelling unit and two-unit/duplex zones, a property owner that proposes to deed restrict a unit for rent to a lower income household is eligible for the following incentives subject to requirements that the bonus JrADU be limited to a maximum size of 500 square feet and located in the walls of the primary residence or existing ADU structure on-site:

- One 500 square foot floor area ratio bonus that may be used to expand the existing primary unit development on the lot subject to Design Review Board approval; and an
- Allowance to develop one bonus 500-square foot JrADU subject to ministerial ADU permit approval, notwithstanding the parameters under California Government Code Sections 65852.2 (ADU law) and 65852.22 (JrADU law), which only grant a right to JrADUs in single unit zones.

SECTION THREE:

The applicant shall demonstrate how the proposed development complies with the following provisions of the ADU Incentive Program applicable to proposed development in the Medium Density Mixed Residential (RM-East, RM-West, and RM-Central) zones, Medium Density Multiple (RM-South), High Density Mixed Residential (R2) zone, and non-residential zones (North Commercial and Professional Commercial) with more dense development (five or more units). Development in the Visitor-Commercial zone is not eligible for the Program. The applicant can be the owner, or owner's representative, and can include lots that are developed with apartments or condominium units.

On eligible properties with more dense development (five or more units), a property owner that proposes to deed restrict units for rent to lower income households is eligible for incentives allowing for an increase in the number of market rate units can be developed subject to requirements as follows:

- Owners shall designate the new deed restricted low-income units as any of the existing dwelling units and/or any new units proposed to be created on-site.
- Non-conforming properties that are over density are allowed to participate in the ADU Incentive Program if the proposed development has an on-site property manager.
- The number of bonus units (ADU or JrADU) awarded as an incentive would be commensurate with the number of low-income units created and the length of time committed to by the property owner for the low-income deed restriction. One bonus unit shall be awarded for each low-income unit with a 30-year contract commitment and 1.5 bonus units awarded for units with a 55-year contract commitment, up to a maximum of 15 bonus units per project. Bonus units per the ADU Incentive Program would be in addition to the two detached ADUs allowed for multi-unit development per State ADU law.

The following table identifies the number of units allowed per lot for multi-unit projects. The column indicating the "total maximum new units" accounts for the two detached ADUs allowed per State ADU law plus the bonus units awarded as an incentive per the ADU Incentive Program, and accounts for the fact that deed restricted low-income units would be designated from a combined total of the existing dwelling units on-site and any new units developed on-site (per the ADU Incentive Program and State ADU law). The bonus unit calculation is rounded down to the nearest whole number.

Proposed Incentives for Existing Dense Multi-Unit Projects			
Bonus Units Awarded if 30 year commitment (1:1)	Bonus Units Awarded if 55 year commitment (1.5:1)	Low Income Units Created	Total Maximum New Units (Includes two per State law + bonus units)
1	1	1	3
2	3	2	4-5
3	4	3	5-6
4	6	4	6-8
5	7	5	7-9
6	9	6	8-11
7	10	7	9-12
8	12	8	10-14
9	13	9	11-15
10	15	10	12-17

- Development of bonus units is subject to approval of an Administrative Coastal Development Permit in compliance with applicable ADU-related objective standards (exempt from discretionary review) and the following requirements:
 - Bonus units would be allowed to be developed as ADUs or JrADUs up to a maximum size of 500 square feet, notwithstanding California Government Code Sections 65852.2 (ADU law) and 65852.22 (JrADU law), which only grant a right to a JrADU in single dwelling unit zones and specify other ADU size parameters that are not applicable to the ADU Incentive Program.
 - Bonus units would be required to be developed inside the walls of existing buildings on-site in converted or repurposed space and/or within a maximum of one new structure subject to compliance with certified Local Coastal Program protections for public scenic views and environmentally sensitive habitat areas, minimum setbacks, maximum height, and parking standards of applicable base zones/overlay zones.
 - Development of the bonus units is exempt from the zone FAR and lot coverage limits.
 - Development of new structures shall be minimized. The bonus units shall be located in existing structures or consolidated and co-located into a maximum of one new structure.
- Development of bonus units that involves construction of a new structure or remodel of the existing structure that involves relocation, alteration, or modification of the exterior of any structure shall be subject to approval of a discretionary Design

Review Permit in accordance with Del Mar Municipal Code Chapter 23.08 (Design Review), prior to approval of the required Administrative Coastal Development Permit.

SECTION FOUR:

The property owner shall record a deed restriction to memorialize the owner's commitment to rent deed restricted ADUs or JrADUs at an "affordable rent" for the specified minimum number of years to any "eligible household". The deed restriction shall ensure that the deed restricted ADUs or JrADUs are maintained as continuously available for rental and occupancy as low income affordable units, that the deed restricted ADUs or JrADUs shall not be rented at market rate during the deed restricted time period, and that the deed restricted ADUs or JrADUs shall not be used for any other purpose than rental and occupancy as low income affordable units.

SECTION FIVE:

State law requires that the City provide an annual report to California's Department of Housing and Community Development by April 1 of each year to report on the status of the City's progress in meeting its regional housing obligation and in the implementation of adopted Housing Element goals. The property owner shall agree to provide annual reports by February 1 that identify the status of the deed restricted ADUs or JrADUs. Annual reports from the owner shall identify the total time rented during the prior calendar year, the rent collected, and shall include a statement of qualifying tenant income to demonstrate compliance with the maximum 80% area median income requirement.

SECTION SIX:

Lots that are developed to the maximum floor area of the applicable zone or that are legal non-conforming (i.e., non-conforming density) are eligible to participate in the ADU Incentive Program.

SECTION SEVEN:

The City shall have the authority to invoke the remedies and enforcement penalties for violation of this ordinance as set forth in Chapter 1.08, or any successor section thereof, of the Del Mar Municipal Code. Breach of any agreement entered into arising from this ordinance shall be considered a violation of this Ordinance. Notwithstanding the foregoing, the City shall also have the right to sue a property owner, for breaching the contract required by this ordinance, in the applicable state or federal court, not only for damages, but for specific performance of the contract. Nothing set forth in this Section shall serve to limit any other remedies available to the City at law or in equity and the City shall have the right to pursue all available remedies.

SECTION EIGHT:

Pursuant to the California Environmental Quality Act (CEQA), the proposed action has been analyzed and determined to be Exempt from CEQA as follows:

- Statutory exemption per Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h) applicable to the adoption of an ADU ordinance to implement the Government Code Section 65852.2 provisions; and
- Categorical exemption per CEQA Guidelines Class 1 exemption per Section 15301 (Existing Facilities) because the proposed amendments would allow a negligible expansion of existing residential use in urban, infill locations to accommodate ADUs and accessory bonus units through the proposed incentive program for creation of affordable housing for low income households consistent with the City's certified Housing Element; Class 2 exemption per Section 15302 (Replacement or Construction) because the proposed amendments would allow new small accessory units and structures only on sites with existing residential development and would maintain substantially the same purpose and capacity; Class 3 (New Construction or Conversion of Small Structures) because the amendments would allow for a limited number of new structures in compliance with the California Government Code mandatory provisions for ADUs, the City's certified LCP, and other applicable State Housing Law and Coastal Act requirements; and Class 32 (Infill Development Projects) because the proposed development would allow small-scale infill development consistent with the certified Housing Element, would not result in any significant effects to traffic, noise, air quality or water quality, would not be allowed within any locations containing environmentally sensitive habitat for endangered, rare, or threatened species, and would be limited to sites that can adequately be served by public services and utilities.

Notwithstanding applicability of the Statutory and Categorical Exemptions identified above, the proposed action has been the subject of prior environmental analysis in the 6th Cycle Housing Element Final Program Environmental Impact Report (SCH No. 2020029064) certified by the City Council on October 5, 2020 (Resolution 2020-52), which analyzed and disclosed anticipated impacts of future housing development. Refer to the Final PEIR: www.delmar.ca.us/DocumentCenter/View/7171/Final-PEIR-91020

No new or substantially greater impacts would result from implementation of the amended ADU Incentive Program. As such, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the Final PEIR referenced above, the proposed action does not require a subsequent EIR or further environmental review.

SECTION NINE:

This Ordinance was introduced by the City Council on December 4, 2023.

SECTION TEN:

The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

SECTION ELEVEN:

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION TWELVE:

Upon adoption, the Ordinance will take effect and be in force 30 days from the date of City Council adoption.

SECTION THIRTEEN:


Once 15 low-income units have been created by the program, City staff shall return to City Council to evaluate and determine next steps.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, California at the Regular Meeting held this 18th day of December, 2023.



Tracy Martinez, Mayor
City of Del Mar

APPROVED AS TO FORM:



Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION
STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, SARAH KRIETOR, Administrative Services Manager/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. 1003, which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 18th day of December, 2023, by the following vote:

AYES: Mayor Martinez, Deputy Mayor Quirk, Councilmembers Druker and Worden
NOES: Councilmember Gaasterland
ABSENT: None
ABSTAIN: None



Sarah Krietor, Administrative Services Manager/
City Clerk
City of Del Mar