

ORDINANCE NO. 973

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING THE DEL MAR MUNICIPAL CODE CHAPTERS 30.24 AND THE CITY'S CERTIFIED LOCAL COASTAL PROGRAM CONSISTENT WITH PROGRAM 2-E REQUIRED BY THE CITY'S EXISTING CERTIFIED HOUSING ELEMENT RELATING TO A TOTAL OF 16 EXISTING PARCELS LOCATED IN THE NORTH COMMERCIAL ZONE IN THE CITY OF DEL MAR, CALIFORNIA

WHEREAS the Housing Element is a required component of the City's Community Plan per State law; and

WHEREAS, the City's existing certified Housing Element requires implementation of Program 2-E relating to the North Commercial Zone that requires the City amend its Community Plan, Del Mar Municipal Code (Zoning) Chapter 30.24, and Local Coastal Program to add residential as an allowed primary use up to a density of 20 dwelling units per acre; and

WHEREAS, 20 dwelling units per acre is the density required by the Housing Element because, per the State, it is the minimum density that is feasible to support the development of affordable housing in a small jurisdiction the size of Del Mar; and

WHEREAS, "affordable housing" refers to units that are restricted for rent to households with an annual household income no greater than 80 percent of the area median income for the San Diego County region; and

WHEREAS, the City of Del Mar does not currently have any affordable housing units within the City and does not have any existing zones that allow sufficient residential density to accommodate the development of affordable housing; and

WHEREAS, the City's certified Housing Element for the 5<sup>th</sup> Cycle planning period (2013-2021) obligated the City to provide capacity for 22 affordable units for rent to low income households that factored in 12 affordable units from the regional housing needs allocation (RHNA) for the 5<sup>th</sup> Cycle and the shortfall of 10 affordable units that was a required carry over from the 4<sup>th</sup> Cycle; and

WHEREAS, the intent of Housing Element Program 2-E is to increase the City's planned housing capacity sufficiently to accommodate its RHNA and more specifically to accommodate development of affordable housing; and

WHEREAS, the State Department of Housing and Community Development (HCD) emphasized in a July 31, 2020 letter to the City that the State law requirement to create adequate sites to accommodate the City's RHNA is a fundamental component of Housing Element law and that HCD may revoke the certification status of the City's Housing Element and trigger further enforcement if the City fails timely implementation of the Program; and

WHEREAS, the State expected Housing Element Program 2-E to have been completed within 24 months of adoption of the 5<sup>th</sup> Cycle Housing Element; and

WHEREAS, if the City does not complete implementation of Program 2-E, the City will be subject to a range of enforcement penalties set forth per State housing law that could negatively impact the City by court orders, lawsuits and fines by the State, legal action by the State Attorney General, fiscal impacts to the General Fund, potential loss of local control over new housing development and risk to State grants in process and ineligibility for future State grant funding; and

WHEREAS, in June 2016 the City received a “Notice of Intent to Sue the City of Del Mar” if the Housing Element programs related to North Commercial and Professional Commercial are not implemented by the City; and

WHEREAS, if the City does not implement Program 2-E it also puts the City at risk of not being able to gain certification of the 6<sup>th</sup> Cycle Housing Element Update in process because the program is needed to create a sufficient number of housing sites to accommodate affordable housing as required per State law; and

WHEREAS, on August 11, 2020, the Planning Commission recommended certification of the PEIR and adoption of the Mitigation, Monitoring and Reporting Program, and adoption of amendments to the Del Mar Community Plan, DMMC Chapters 30.24 and 30.25, and Local Coastal Program; and

WHEREAS, on August 20, 2020, a notice of public hearing was posted and published and mailed notice was provided informing the public of the scheduled City Council public hearing on September 8, 2020; and

WHEREAS, on September 8, 2020, the City Council adopted a Resolution certifying a Program Environmental Impact Report (PEIR SCH No. 2019029058) and adopting a Mitigation, Monitoring and Reporting Program in accordance with the California Environmental Quality Act (CEQA) that analyzes and discloses the known potential impacts associated with the land use plan and code amendments covered by this Ordinance and identifies a mitigation framework that will apply to future housing development; and

WHEREAS, on September 21, 2020, a notice of public hearing was posted and published and mailed notice was provided informing the public of the scheduled City Council public hearing on October 5, 2020; and

WHEREAS, on September 30, 2020, the City received an enforcement letter from the California Department of Housing and Community Development indicating that the City’s existing Housing Element is out of substantial compliance with State law because the City had failed to implement program actions in the 5<sup>th</sup> Cycle Housing Element; and

WHEREAS, adoption of this Ordinance will directly address one of the identified program actions (Program 2-E North Commercial Zone) needed to bring the City into compliance with its existing Housing Element and State law; and

WHEREAS, on October 5, 2020, the City Council introduced the Ordinance; and

WHEREAS, the proposed amendments constitute a Zone Code Amendment and Local Coastal Program Amendment that is consistent with the Housing Element of the City's Community (General) Plan and following City Council action will be subject to review and unconditional certification by the Coastal Commission.

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

**SECTION ONE:** That Del Mar Municipal Code (DMMC) Section 30.24.010 (NC Zone) be amended as follows:

30.24.010 Purpose

The NC Zone serves as a northerly gateway to the community south of the San Dieguito River and Lagoon. The NC Zone is designed to allow activities that provide a service to the community, including a range of commercial and light industrial uses, and residential where compatible with adjacent land uses. Development in the NC Zone shall be of low intensity profile, offering a lively open air environment with substantial open space.

**SECTION TWO:** That DMMC Section 30.24.030 (NC Zone) be amended to read as follows:

30.24.030 Allowable Uses

The following uses are allowable in the NC Zone:

A. Commercial uses provided that:

1. The use does not involve the sale of alcohol for on-site consumption between the hours of 11:00 p.m. and 6:00 a.m. and further provided that the use does not involve the provision of goods, food or beverages, or services in a drive-in or drive-thru manner.
2. The retailing of goods, foods and beverages, the dispensing of services and light manufacturing from the following:

[No change to the listed uses]

3. Outdoor display areas located on the exterior of a structure housing a retail sales operation, where goods or commodities otherwise available for sale in

the associated retail sales operation are displayed but not sold; provided all of the following requirements are met:

- a. The outdoor display area is located entirely on the same lot as the associated retail sales operation;
  - b. The area devoted to outdoor display does not encroach upon required parking or access areas;
  - c. The outdoor display area is contiguous and not more than four feet in width measured from a point perpendicular to the exterior wall of the adjacent structure housing the associated retail sale operation and not more than ten feet in length measured along the exterior wall of the adjacent structure housing the associated retail sale operation; and
  - d. The display of goods or commodities and placement of display structures is limited to the hours of operation of the associated retail sales operation.
- B. Any principal use permitted in the CC Zone (excludes those uses which, under CC Zone provisions, would require a conditional use permit).
- C. Multiple dwelling unit residential up to a density of 20 dwelling units per acre.
- D. Emergency shelters pursuant to Section 30.24.035.
- E. One dwelling unit as accessory to and on the same site as that of a permitted use, and conforming to the parking requirements of the R2 Zone.
- F. Short term rental of a dwelling unit.
- G. Any similar enterprise or business which conforms to the description and purpose of the NC Zone, and is not detrimental to the welfare of the community.

**SECTION THREE:** That DMMC Section 30.24.070 (NC Zone) be amended to read as follows:

#### 30.24.070 Development Standards

In the NC Zone, the following development standards apply:

- A. Density: Up to a maximum of 20 dwelling units per acre
1. All residential development or conversions shall provide affordable housing pursuant to Chapter 24.21.

2. Notwithstanding Section 24.21.030, residential development or conversions of two, three, four or five units on one lot shall set-aside one unit for rental at below market rate to a low income household or donate one off-site unit, within the City's jurisdiction, of a like size and condition to the City or a City approved organization to be reserved for use as Affordable Housing. The option for payment of the In-Lieu Housing Mitigation Fee shall not be allowed.

[No change to subsections B. (Lot Dimensions) through C. (Construction Standards)]

**SECTION FOUR:** That the Chapter II Land Use Development “section B” policies in the Del Mar certified Local Coastal Program be amended to add a new Policy II-4 and amend existing Policy II-8 to read as follows:

Policy II-4: Increase the City’s overall housing capacity and capability to accommodate housing units in commercial zones while minimizing potential land use compatibility conflicts and assuring priority for coastal-dependent and coastal related development.

Policy II-8: Retain a pedestrian-oriented downtown which groups housing, retail services, and commercial services with facilities for civic and community activities.

**SECTION FIVE:** That the Chapter II Land Use Development “section C” policies in the Del Mar certified Local Coastal Program be amended to amend the Valley District, North Hills District, and Village District policies to read as follows:

## 2. Valley District

This district is located in the northern section of the City and includes the San Dieguito River and Lagoon area, the majority of which is designated as Floodway (FW). It also contains an area designated as North Commercial (NC). Any future use of this district shall be consistent with this Land Use Plan. When reviewing future development proposals, special attention shall be given to the preservation of sensitive wetland habitat and its immediate uplands, and protection against and avoidance of seismic and flooding hazards.

Most of the property which comprises the 22nd District Agricultural Association lies within the overall boundaries of the Valley District. However, it is given its own separate designation on the Land Use Map and is assigned the corresponding land use policies in Section #3 below.

## 8. North Hills District

The majority of this district is designated for single-family residential development. The District also contains a small area designated as R2 with the same restrictions for such use as described in the South Beach District. The central portion of this district, as shown on Figure II-A, is designated for R1-10 (Low Density) with a maximum allowable density

of 4.3 du/ac. Any future development within this area shall be compatible and harmonious with the existing character of this single family-residential neighborhood.

A large portion within this district is located on steep hillside areas above the San Dieguito Lagoon and its watershed. This area is designated for larger lot single family development at R1-40 (Very Low 1 du/ac). Much of the area is also within the Bluff, Slope, and Canyon Overlay Zone. Accordingly, development within this area shall be designed to minimize the disruption of topography and to preserve the open space character of these highly visible and sensitive areas. All development shall be consistent with the Bluff, Slope and Canyon and Open Space Policies of this Land Use Plan, where applicable. Some of the area now assigned the designation of R1-40 has been acquired by public interests. The public acquisition of these areas, as shown on Figure V-A, may warrant the future reassignment of a corresponding land use designation.

That area within the district immediately adjacent to the Village Center District is designated as RM-Central (Medium Density Mixed-Central) where residential uses are allowed at a maximum density of 6.3 du/ac. This designation also allows for duplex development on parcels greater than 5,000 square feet with the receipt of a Conditional Use Permit.

The district also contains two commercially designated areas that allow for multiple-dwelling unit residential development at a maximum density of 20 du/ac, one located near Camino del Mar, south of 9th Street (Professional Commercial-PC) and one in the northern portion of the district adjacent to Jimmy Durante Boulevard (North Commercial-NC). Because of its proximity to the adjacent wetlands and flood-prone areas of the San Dieguito River/Lagoon, development in the North Commercial area shall be carefully reviewed for its consistency with the provisions of Chapters III and VI of this Land Use Plan regarding the minimizing of hazards and the preservation of sensitive lands. Much of the northern section of this district also lies within the plan area of the San Dieguito River Valley Regional Open Space Park. All development proposals shall be reviewed for their consistency with the provisions of the San Dieguito River Valley Regional Open Space Park Plan.

**SECTION SIX:** The City Council finds that approval of this ordinance is covered by the Program Environmental Impact Report (PEIR) document (SCH No. 2019029058) that was prepared and certified pursuant to the California Environmental Quality Act. The City Council bases this finding upon the record prepared by the City and the City's analysis of the potential environmental effects of this ordinance.

**SECTION SEVEN:** This Ordinance was introduced by the City Council on October 5, 2020.

**SECTION EIGHT:** 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 NINE:** Upon adoption, the Ordinance will be submitted to the California Coastal Commission for certification as a Local Coastal Program Amendment. The Ordinance will take effect and be in force on the date that the Coastal Commission takes action to unconditionally certify the Local Coastal Program Amendment.

**SECTION TEN:** The City shall file a copy of the adopted Ordinance with the State Department of Housing and Community Development.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, California at the Regular Meeting held this 19th day of October, 2020.



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Ellie Haviland, Mayor  
City of Del Mar

APPROVED AS TO FORM:



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Leslie E. Devaney, City Attorney  
City of Del Mar

ATTEST AND CERTIFICATION

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CITY OF DEL MAR

I, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. 973, 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 19th day of October, 2020, by the following vote:

AYES: Mayor Haviland, Council Members Parks and Worden

NOES: Deputy Mayor Gaasterland, Council Member Druker

ABSENT: None

ABSTAIN: None



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Ashley Jones, Administrative Services  
Director/City Clerk  
City of Del Mar