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Del Mar City Council Meeting Agenda

City of Del Mar, Town Hall
1050 Camino del Mar, Del Mar, California

Civility Works: The Del Mar Code of Civil Discourse: Together we will promote inclusion; listen to understand; show respect; be clear and fair; and focus on the issue.

Regular Meeting

Monday, June 5, 2023 at 4:30 PM

Tracy Martinez
Mayor

Dan Quirk
Deputy Mayor

Dave Druker
Council Member

Terry Gaasterland
Council Member

Dwight Worden
Council Member

Ashley Jones
City Manager

Leslie E. Devaney
City Attorney

Nestor Machado
Acting City Clerk

Public Participation/Comment: Members of the public can participate in City Council meetings remotely and in-person. Anyone may address the City Council for up to three minutes, at the Mayor's discretion, on items on the agenda. Members of the public wishing to speak on items not on the agenda may do so under Public Oral Communications. Agenda items may be addressed in any order at the discretion of the Mayor. When addressing the Council, please state your name for the record. Any electronic presentations must be received before 9 a.m. on the date of the Council meeting. No PowerPoint presentations can be loaded during the meeting.

In-Person Participation: Please submit a completed "Speaker Slip", including the item number you wish to speak on, to the City Clerk prior to the Mayor announcing the agenda item. The forms are located near the door at the rear of the Meeting Room. When called to speak, please approach the podium and state your name for the record.

Remote Participation: Members of the public can participate in the meeting remotely using the Zoom link and/or dial-in information provided below. Those wishing to comment live should join the Zoom meeting when the item(s) they wish to speak on is announced or at the meeting start time for items not on the agenda. **Zoom Link:** <https://us02web.zoom.us/j/84790910014>; **Phone:** (669) 900-6833; **Meeting ID:** 847 9091 0014

Written Comments: Members of the public can participate in the meeting by submitting a written red dot comment via email to cityclerk@delmar.ca.us. The deadline to submit written comments is 12 p.m. on the day of the meeting and the subject line of your email should clearly state the agenda item you are commenting on.

Viewing the Meeting and Access to Agenda Materials: Members of the public can watch the meeting live on the City's website at: <http://delmar.12milesout.com/Video/Live> and on Cable TV Spectrum Ch. 24, AT&T Ch. 99 starting at 4:30 PM. Agenda materials and communications from the public on agenda items, "Red Dots", are available on the City's website: <http://www.delmar.ca.us/AgendaCenter> and a hard copy of the agenda materials are available at Del Mar City Hall and the Del Mar Library during their business hours.

Assistance for Persons with Disabilities: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Administrative Services Department at 1050 Camino del Mar or by calling (858) 755-9313. Notification of at least 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

- I. CALL TO ORDER/ROLL CALL
- II. CITY ATTORNEY CLOSED SESSION REPORT
- III. PLEDGE OF ALLEGIANCE
- IV. PUBLIC ORAL COMMUNICATIONS

Each person wishing to speak before the City Council on any matter not on the agenda shall submit a "Speaker Slip" to the City Clerk or raise their hand in Zoom when Public Oral Communication is announced. Each speaker will have up to three (3) minutes to speak at the discretion of the Mayor and may be asked clarifying questions. Information received during Public Oral Communication may be received, placed on a future agenda, or referred to the City Manager by the City Council. State law generally precludes the City Council from discussing or acting upon any topic presented during oral communications that is not described on the posted agenda.

Note: there is a time limit of 30 minutes for this section of public communications and each speaker will be heard in the order of the submission of their speaker slip. Speakers who have turned in a speaker slip prior to the time oral communications was called on the agenda, but were not heard during the initial time period shall be called to speak at the end of the agenda.

- V. CITY COUNCIL COMMENTS
- VI. COMMUNITY ANNOUNCEMENTS
- VII. CITY MANAGER'S REPORT
- VIII. CONSENT CALENDAR

All items listed on the Consent Calendar are considered to be routine and will be acted upon with one motion. There will be no separate discussion of these items unless a member of the City Council or the public so requests, in which event, the item will be pulled from the Consent Calendar and considered separately after the motion to approve the Consent Calendar. If you wish to remove an item from the Consent Calendar, please submit a "Speaker Slip" to the City Clerk or raise your hand in Zoom.

1. Approval of Minutes: May 15, 2023 Regular and Special Meeting

Recommended Action: Approve Minutes.

Reference: Clerk's Minutes Book

2. Ratification of List of Demands, dated June 5, 2023

Recommended Action: Ratify the List of Demands.

Reference: Clerk's File No. 201-3

3. Waiver of Reading of Ordinances on Agenda

Recommended Action: Waive Reading of Ordinances.

Reference: Clerk's File No. 401-4

4. Approval of Fiscal Year 2023-24 Senate Bill 1 Funding for the City's Annual Pavement Rehabilitation Project

Recommended Action: Staff recommends that the City Council adopt a Resolution (Attachment A) adopting the list of projects that includes the Fiscal Year (FY) 2023-24 Citywide Annual Pavement Rehabilitation Project to be funded by Senate Bill 1 (SB 1) from the State of California.

Reference: Clerk's File No. 401-7, 901-5

5. Agreements with the Del Mar Village Association for Destination Marketing and Economic Development

Recommended Action: Staff recommends that the City Council:

1) Approve an Agreement with the Del Mar Village Association (DMVA) for an initial three year term from July 1, 2023, through June 30, 2026, for Destination Marketing (Attachment A); 2) Approve an Agreement with the DMVA for an initial three year term from July 1, 2023, through June 30, 2026, for Economic Development Services (Attachment B); and 3) Authorize the City Manager to execute the Agreements.

Reference: Clerk's File No. 406-1, 1202-16

6. Agreement with Del Mar Community Connections for Senior Support Services

Recommended Action: Staff recommends that the City Council: 1) Approve an Agreement with Del Mar Community Connections (DMCC) for senior support services (Attachment A) for an initial three-year term from July 1, 2023, through June 30, 2026; and 2) Authorize the City Manager to execute the Agreement.

Reference: Clerk's File No. 406-1, 1202-15

7. Agreement with the Regional Task Force on Homelessness for Point-In-Time Count Services

Recommended Action: Staff recommends that the City Council: 1) Approve an Agreement with the Regional Task Force on Homelessness (RTFH) for Point-In-Time Count Services (Attachment A) for an initial three-year term from July 1,

2023, through June 30, 2026, and 2) Authorize the City Manager to execute the Agreement.

Reference: Clerk's File No. 406-1

8. Funding and Service Agreement with Del Mar Community Connections for the Del Mar Rental Assistance Program

Recommended Action: Staff recommends that the City Council: 1) Approve a Funding and Service Agreement with Del Mar Community Connections (DMCC) for management and administration of the Del Mar Rental Assistance Program until the Program naturally terminates due to attrition (Attachment A); and 2) Authorize the City Manager to execute the Agreement.

Reference: Clerk's File No. 406-1, 1202-15

9. Agreement with CorVel Enterprise Comp, Inc. for Workers' Compensation and Claims Administration Services

Recommended Action: Staff recommends that the City Council: 1) Approve a Professional Services Agreement with CorVel Enterprise Comp, Inc. (Attachment A) to provide third party workers' compensation and claims administration services; and 2) Authorize the City Manager to execute the Agreement.

Reference: Clerk's File No. 406-1, 502-4

10. Lagoon Committee Appointment

Recommended Action: The City Council Liaisons to the Lagoon Committee recommend that the City Council appoint Jeffrey Barnouw to the Lagoon Committee as a voting member to serve a full three-year term starting July 1, 2023, and ending on July 31, 2026.

Reference: Clerk's File No. 401-5

11. Recommended Compensation Adjustment Related to the City Manager's Performance Evaluation

Recommended Action: The City Council Human Resources Subcommittee recommends that the City Council adopt the Resolution (Attachment A) approving changes to the City Manager's compensation effective December 13, 2022, and updating the Management, Professional, Confidential salary schedule to reflect those changes (Exhibit A to Attachment A).

Reference: Clerk's File No. 502-1

IX. PUBLIC HEARING

12. Adoption of Water Shortage Contingency Plan and Introduction of an Ordinance Amending Chapter 21.70 of the Del Mar Municipal Code to Revise Emergency Water Management Water Shortage Response Levels

Recommended Action: Staff recommends that the City Council: 1) Adopt the City's Water Shortage Contingency Plan (WSCP) (Attachment A) and authorize future administrative updates via the City Manager; and 2) Hold a public hearing and introduce an Ordinance (Attachment B) amending the Del Mar Municipal Code (DMMC) Chapter 21.70 to revise water shortage responses to align with the six standard water shortage levels as required by the California Water Code.

Reference: Clerk's File No. 401-4, 401-9, 907-10

13. Introduction of an Ordinance to Amend Prospective Ordinance No. 982 and Adoption of a Resolution to Amend the City's Local Coastal Program Land Use Plan Pursuant to California Coastal Commission Action on May 10, 2023, Approving a Conditional Certification Order with Required Modifications (All Relating to the Parking Amendments under DMMC Chapter 30.80 Adopted by the City Council in December 2021)

Recommended Action: Staff recommends that the City Council take the following actions to approve changes required by the California Coastal Commission (CCC) as a condition of final certification of the City's parking-related Local Coastal Program Amendment application (Zone Code Amendment ZA21-001/Local Coastal Program Amendment LCPA21-001) including:

- 1) Introduction of an Ordinance (Attachment A) to amend the previously adopted City Ordinance No. 982 (See Attachment D for Ordinance changes in strikeout-underline form); and
- 2) Adoption of a Resolution (Attachment B) to amend the Land Use Plan of the City's certified Local Coastal Program (LCP), consistent with the parking regulations under the Del Mar Municipal Code in accordance with the CCC conditional approval letter (Attachment C).

Reference: Clerk's File No. 305-1, 401-4, 401-9, 905-3

14. An Ordinance to Regulate Two Unit Residential Development and Urban Lot Split Projects in Accordance with California Senate Bill 9 (SB 9)

Recommended Action: Staff recommends that the City Council introduce an Ordinance (Attachment A) adding Del Mar Municipal Code (DMMC) Chapters 30.93, 24.66, 23.07; amending DMMC Chapters 30.75, 30.10, 30.11, 30.12, 30.13, 30.14, and 30.15; and adopting a Local Coastal Program Amendment to establish procedures, objective development standards, and objective design

standards to regulate Two Unit Residential Development and Urban Lot Split projects in accordance with California Senate Bill 9 (SB 9).

Reference: Clerk's File No. 305-1, 401-4, 401-7, 401-9

X. COUNCIL MEETING RECESS

XI. CITY COUNCIL OTHER BUSINESS

15. Building Electrification Ordinance Update & Proposed Sustainability Advisory Committee Work Plan Amendment

Recommended Action: Staff recommends that City Council put the development of a building electrification ordinance on hold until there is more clarity on the impacts of a recent State Court ruling regarding building electrification; and authorize staff to work with the Sustainability Advisory Committee (SAC) on the development of a Balloon Ban Ordinance in the interim.

Reference: Clerk's File No. 401-4, 401-5, 1001-3

XII. REGIONAL ORGANIZATION REPORTS

A Councilmember assigned as a liaison to a regional organization may make a written or oral report. State law precludes the Council from commenting on, discussing, or acting on a report unless the item of business within the report is described in the agenda.

- A. 22nd District Agricultural Association Community Relations Committee (Gaasterland/Martinez)
- B. Clean Energy Alliance JPA (CEA) Board of Directors (Druker/Worden)
- C. CSA-17 Ambulance District Advisory Board (Martinez/Quirk)
- D. Fire Governance Board, Solana Beach/Del Mar/Encinitas (Quirk/Martinez)
- E. League of California Cities – San Diego Chapter (Martinez/Worden)
- F. North County Transit District (NCTD) (Druker/Gaasterland)
- G. Regional Solid Waste Association (Worden/Quirk)
- H. San Diego Association of Governments Board (SANDAG) (Gaasterland/Martinez/Druker)
- I. SANDAG Borders Committee (Druker)
- J. SANDAG Regional Planning Committee (Gaasterland)
- K. SANDAG Shoreline Preservation Working Group (Worden/Gaasterland/Martinez)
- L. San Diego Metropolitan Wastewater Commission/JPA (Worden/Quirk/Druker)
- M. San Dieguito River Valley Regional Open Space Park JPA –Executive Committee (Worden/Quirk)
- N. Other Regional Organization Reports

XIII. COUNCIL COMMITTEES/SUBCOMMITTEES/COMMUNITY ORG REPORTS

A Councilmember assigned as a liaison to a City Committee, Council Subcommittee OR Community Organization may make a written or oral report. State law precludes the Council from commenting on, discussing, or acting on a report, unless the item of business within the report is described in this agenda.

- A. Arts Advisory Committee (Druker/Worden)
- B. Clean Water Rate Project
- C. Del Mar Community Connections (Martinez/Worden)
- D. Del Mar Village Association (Gaasterland/Martinez)
- E. Finance Committee (Druker/Worden)
- F. Housing Subcommittee (Gaasterland/Martinez)
- G. Human Resources Subcommittee (Druker/Worden)
- H. Legislative Subcommittee (Druker/Gaasterland/Mayor Martinez end of 3rd Quarter)
- I. Measure Q Citizen Oversight Committee (Gaasterland/Quirk)
- J. Parks and Recreation Committee (Martinez/Worden)
- K. Del Mar Railroad Committee (Druker/Gaasterland)
- L. Lagoon Committee (Quirk/Worden)
- M. Sea-Level Rise Adaptation Plan Implementation Subcommittee (Gaasterland/Martinez)
- N. Shores Advisory Committee
- O. Sustainability Advisory Committee (Martinez/Worden)
- P. Traffic and Parking Advisory Committee (Quirk/Worden)
- Q. Undergrounding Project Advisory Committee (Druker/Gaasterland)
- R. Other Committee-Subcommittee Reports

XIV. UPCOMING AGENDA ITEMS

The following topics/items are tentatively planned for upcoming agendas. The title, wording, and planned date for these items are subject to change. Final agendas are posted at City Hall 72 hours in advance of the meetings and are also posted on our web site with the accompanying staff report. Please watch our web site: www.delmar.ca.us for City Council Agendas.

June 19, 2023
Second Reading of SB 9 Ordinance
Second Reading of Parking LCPA Ordinance with California Coastal Commission Modifications
Second Reading of Emergency Water Management Program Ordinance
Approval of Agreement for Third Party Administrator For General Liability Claims Management
Approval of Professional Services Agreement for Communication Services
City Hall Copier Lease
State Mandated Annual Fire Inspections
Adoption of the FY 2023-24 & 2024-25 Operating and Capital Budget

Agreements for FY 2023-24 & 2024-25 Community Support Funding
Planning Commission Interviews and Appointment
Design Review Board Interviews and Appointment

XV. CERTIFICATION

I, Nestor Machado, Acting City Clerk for the City of Del Mar, hereby certify that a copy of this agenda was posted at City Hall on the 1st day of June, 2023 at approximately 5:20 p.m.



Nestor Machado, Acting City Clerk

6/1/2023
Date



**DEL MAR CITY COUNCIL
SPECIAL MEETING MINUTES
CLOSED SESSION**

MAY 15, 2023

City of Del Mar Town Hall
1050 Camino del Mar, Del Mar, California

CALL TO ORDER

Mayor Martinez called the meeting to order at 2:45 P.M.

ROLL CALL

Present: Mayor Tracy Martinez; Deputy Mayor Dan Quirk; Councilmembers Dave Druker, Terry Gaasterland and Dwight Worden

CLOSED SESSION

- A) Conference with Legal Counsel - Existing Litigation
The Winston School of San Diego, Inc. v. City of Del Mar
San Diego Superior Court Case No. 37-2021-00042977-CU-CO-CTL
Authority: Government Code Section 54956.9(d)(1)
Reportable Action: None. Councilmember Druker was recused from participating in this item due to the proximity of his residence and the Winston School site.

- B) Public Employee Performance Evaluation
Title: City Manager
Authority: Government Code Section 54957
Reportable Action: None.

ADJOURNMENT

Mayor Martinez adjourned the meeting at 3:50 P.M.

Nestor Machado, Acting City Clerk



**CITY OF DEL MAR
CITY COUNCIL REGULAR MEETING MINUTES
MAY 15, 2023
City of Del Mar Town Hall
1050 Camino del Mar, Del Mar California 92014**

The minutes set forth the actions taken by the City Council on the matters stated. Audio/video recordings of the City Council proceedings are retained for a period of ten years, in accordance with the City's Records Retention Schedule. Audio/video recordings, as well as written materials presented to the City Council, including Red Dots (materials provided to the City Council after the agenda has published), are available on the City's website at www.delmar.ca.us/AgendaCenter or by contacting the Administrative Services Department at (858) 755-9313.

CALL TO ORDER

Mayor Martinez called the Regular Meeting to order at 4:31 p.m.

ROLL CALL

Present: Mayor Tracy Martinez; Deputy Mayor Dan Quirk; Councilmembers Dave Druker and Terry Gaasterland.

Absent: Councilmember Dwight Worden

CITY ATTORNEY CLOSED SESSION REPORT

Acting City Attorney Richard Romero reported that Councilmember Druker was recused from Item A related to the Winston School due to the proximity of his residence to the school site and there were no reportable actions for the May 15, 2023, City Council Closed Session meeting.

PLEDGE OF ALLEGIANCE

Mayor Martinez led the Pledge of Allegiance.

PUBLIC ORAL COMMUNICATIONS

Mayor Martinez opened Public Oral Communications and the following people spoke:

- 1) Ken Olson
- 2) Judi Strang

Mayor Martinez closed the item to public comment.

CITY COUNCIL COMMENTS & COMMUNITY ANNOUNCEMENTS

Councilmember Druker reported on the upcoming La Jolla Half Marathon event. Mayor Martinez reported on Del Mar Rotary Club Chili & Quackers Fundraiser event. Councilmember Gaasterland reported on the Farmer's Market.

CITY MANAGER'S REPORT

City Manager Ashley Jones announced upcoming Council Budget Workshop dates of May 30 and 31.

PRESENTATIONS

ITEM 1: PROCLAMATION HONORING MARTIN “MARTY” COOPER ON THE 50TH ANNIVERSARY OF HIS INVENTION OF THE MOBILE CELL PHONE AND MANY SIGNIFICANT CONTRIBUTIONS (CLERK’S FILE NO. 1201-5)

Mayor Martinez presented a proclamation honoring Martin “Marty” Cooper on the 50th Anniversary of his invention of the mobile cell phone.

City Council thanked Marty Cooper for his service and contributions.

Mayor Martinez opened the item to public comment and the following people spoke:

- 1) Jeffrey Lang
- 2) Jeffrey Lamon
- 3) Nancy Stoke
- 4) Lynn Gaylord
- 5) Eva Matteson

Mayor Martinez closed the item to public comment.

ITEM 2: 2023 SAN DIEGO COUNTY FAIR – “GET OUT THERE” PRESENTATION (CLERK’S FILE NO. 1502-10)

A presentation was provided by Chief Executive Officer Carlene Moore from the 22nd District Agricultural Association.

City Council questions and discussion focused on limiting admissions to 60,000 daily; website information for deals and discounts; ticket purchasing options; on-site medical team; and the event’s theme. City Council further discussed issues and concerns related to the FoodieLand event including admissions, entrance points, event effect on businesses, and traffic impact.

Mayor Martinez opened the item to public comment and the following person spoke:

- 1) Nancy Stoke

Mayor Martinez closed the item to public comment.

ITEM 3: DEL MAR BLUFFS PRESENTATION (CLERK’S FILE NO. 1404-2)

A presentation was provided by researcher Adam Young in the Integrative Oceanography Division and Center for Coastal Studies at Scripps Institution of Oceanography, UC San Diego.

City Council questions focused on sea caves; clarification on presentation graphs; site specific monitoring in real time; and bluffs above the track monitoring.

Mayor Martinez opened the item to public comment and the following people spoke:

- 1) Carol Kerridge
- 2) Camilla Rang

Mayor Martinez closed the item to public comment.

ITEM 4: DEL MAR ANNUAL PREPARATIONS FOR SUMMER SEASON (CLERK'S FILE NO. 1101-1, 1404-1, 1502-10)

A presentation was provided by Community Services Director/Lifeguard Chief Jon Edelbrock.

City Council questions focused on the City's Junior Lifeguard Academy; parking management and enforcement services; and traffic control.

There were no public speakers for this item.

CONSENT CALENDAR

Acting City Clerk Nestor Machado read the titles of the items included on the Consent Calendar. There were no public speakers for the consent calendar items.

IT WAS MOVED BY COUNCILMEMBER GAASTERLAND, SECONDED BY COUNCILMEMBER DRUKER TO APPROVE THE CONSENT CALENDAR ITEMS 5 THROUGH 10 AND ITEM 12. (VOTE 4-0-1, COUNCILMEMBER WORDEN ABSENT)

Ayes: Mayor Martinez, Deputy Mayor Quirk, and Councilmembers Druker, and Gaasterland; Noes: 0; Absent: Councilmember Worden; Abstain: 0.

ITEM 5: APPROVAL OF MINUTES: APPROVAL OF MINUTES: MAY 1, 2023, REGULAR AND SPECIAL MEETING (CLERK'S MINUTES BOOK)

Council approved the minutes, on consent.

ITEM 6: RATIFICATION OF LIST OF DEMANDS, DATED MAY 15, 2023 (CLERK'S FILE NO. 201-3)

Council approved the list of demands, on consent.

ITEM 7: WAIVER OF READING OF ORDINANCES ON AGENDA (CLERK'S FILE NO. 401-4)

Council waived the reading of ordinances, on consent.

ITEM 8: APPROVAL OF AGREEMENT FOR ANIMAL CONTROL AND SHELTER SERVICES (CLERK'S FILE NO. 406-1)

Council approved a professional services agreement with the San Diego Humane Society to provide animal control and shelter services for an initial five-year period beginning July 1, 2023; and authorized the City Manager to execute the agreement, on consent.

ITEM 9: RESOLUTION APPROVING THE UPDATED CITY OF DEL MAR ANNEX OF THE 2023 MULTI-JURISDICTIONAL HAZARD MITIGATION PLAN (CLERK'S FILE NO. 1101-1, 1103-1)

Council adopted Resolution 2023-14, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, APPROVING UPDATES TO THE MULTI-JURISDICTIONAL HAZARD MITIGATION PLAN CITY OF DEL MAR ANNEX", on consent.

ITEM 10: ACCEPTANCE OF 2022 STATE HOMELAND SECURITY PROGRAM GRANT FUNDS (CLERK'S FILE NO. 201-13)

Council accepted \$6,909 in grant funds from the Fiscal Year 2022 State Homeland Security Program (SHSP) for the purchase of a thermal imaging camera and rescue saws with additional chain for the Del Mar Fire Department; and authorized the City Manager to execute the necessary grant documents, on consent.

ITEM 11: ADOPTION OF AN AMENDED RESTORATIVE ACTION PLAN FOR 404 TORREY POINT ROAD (CLERK'S FILE NO. 301-8, 404-13)

The item was pulled from the consent calendar for public comment and questions. Bill Pate with the City Attorney's Office provided a brief overview of the item.

Council questions focused on the status of the previous Restorative Action Plan (RAP); wording revision to Item 2 on the Amended RAP to include "namely" as noted in the Court's judgment; removal of Item 4 from the Amended RAP; and clarification of costs.

Mayor Martinez opened the item to public comment and the following people spoke:

- 1) Richard Rice
- 2) Ken Olson
- 3) Mike Halpern (time donated by Erica Halpern)
- 4) Bill Carpenter

Mayor Martinez closed the item to public comment.

Council discussion focused on red gum eucalyptus trees that the Court found non-native and non-Design Review Board (DRB) approved.

IT WAS MOVED BY COUNCILMEMBER GAASTERLAND, SECONDED BY MAYOR MARTINEZ TO ADOPT RESOLUTION 2023-15, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING THE RESTORATIVE ACTION PLAN (RAP) FOR CODE ENFORCEMENT CASE CE 19-040 AT 404 TORREY POINT ROAD PURSUANT TO THE SEPTEMBER 12, 2022 JUDGMENT OF THE SAN DIEGO SUPERIOR COURT" WITH ADDITION OF WORD "NAMELY" FOR ITEM 2, REMOVAL OF ITEM 4, AND ACKNOWLEDGING THAT JUDGE'S DECISION HAS EFFECTIVELY RESCINDED THE PREVIOUS RAP. (VOTE 4-0-1, COUNCILMEMBER WORDEN ABSENT)

Ayes: Mayor Martinez, Deputy Mayor Quirk, and Councilmembers Druker, and Gaasterland; Noes: 0; Absent: Councilmember Worden; Abstain: 0.

ITEM 12: APPROVAL OF MISSION/PURPOSE STATEMENTS FOR CITY COUNCIL SUBCOMMITTEES (CLERK'S FILE NO. 401-1, 401-5)

Council approved the proposed mission/purpose statements for Council subcommittees as prepared by the Council subcommittees and staff, on consent.

COUNCIL MEETING RECESS:

The City Council took a meeting recess from approximately 6:45 p.m. to 7:01 p.m.

CITY COUNCIL OTHER BUSINESS

ITEM 13: CITY OF DEL MAR UTILITY UNDERGROUNDING PROGRAM UPDATE (CLERK'S FILE NO. 1001-2)

An introduction to the item was provided by City Manager Ashley Jones. A presentation was provided by Project Manager II, Martin Boyd.

Council questions focused on bidding process; program's completion timeline; components of cost estimates; San Diego Gas & Electric's (SDG&E) preliminary design completion of three work areas; and causes for process delays.

Mayor Martinez opened the item to public comment and the following people spoke:

- 1) Richard Jamison
- 2) Dolores Davies Jamison
- 3) Frank Chisari
- 4) Laura DeMarco

Mayor Martinez closed the item to public comment.

Council discussion focused on internal cost analysis; funding sources; prioritization of areas; sequential construction process; homeowner laterals and easements; and list of impacted homeowners contact information distribution process.

ITEM 14: APPROVAL OF A TASK ORDER WITH UTILITY SPECIALISTS SOUTHWEST, INC. TO PERFORM UTILITY UNDERGROUND DISTRICT (UUD) FORMATION SERVICES FOR UUD 1B (STRATFORD COURT NORTH) (CLERK'S FILE NO. 406-1, 1001-2)

A presentation was provided by Project Manager II Martin Boyd.

There were no public speakers for this item.

IT WAS MOVED BY COUNCILMEMBER GAASTERLAND, SECONDED BY DEPUTY MAYOR QUIRK TO: 1) APPROVE A \$74,375 TASK ORDER WITH UTILITY SPECIALISTS SOUTHWEST, INC. TO PERFORM UTILITY UNDERGROUND DISTRICT (UUD) FORMATION SERVICES FOR UUD 1B (STRATFORD COURT NORTH); AND 2) AUTHORIZE THE CITY MANAGER TO EXECUTE THE TASK ORDER. (VOTE 3-0-2, COUNCILMEMBER WORDEN ABSENT; COUNCILMEMBER DRUKER RECUSED)

Ayes: Mayor Martinez, Deputy Mayor Quirk, and Councilmember Gaasterland; Noes: 0; Absent: Councilmember Worden and Councilmember Druker (recused); Abstain: 0.

ITEM 15: APPOINTMENT OF ARTS ADVISORY COMMITTEE COUNCIL LIAISON (CLERK'S FILE NO. 401-5)

An introduction to the item was provided by City Manager Ashley Jones.

Council questions focused on the established committee's work plan; temporary arts program; and requirements with regard to filling the vacancy for a second Council Liaison member.

Mayor Martinez opened the item to public comment and the following person spoke.

- 1) Betty Wheeler (time donated by Dolores Jamison and Juliana Maxey-Allison)

Mayor Martinez closed the item to public comment.

Council consensus was to hold the vacancy open; for staff to follow up with Council Liaison Worden to reconsider resignation; and they expressed strong support for the Art Committee's continued work on the established work plan.

REGIONAL ORGANIZATION AND COUNCIL COMMITTEES/SUBCOMMITTEES/COMMUNITY ORGANIZATION REPORTS

City Council representatives reported on the North County Transit District (NCTD); San Diego Association of Governments Board (SANDAG); and Parks and Recreation Committee.

ADJOURNMENT

Mayor Martinez adjourned the meeting at 8:42 p.m.

Nestor Machado, Acting City Clerk

DR



LIST OF DEMANDS
CITY OF DEL MAR
for
City Council Meeting
June 5, 2023

Vendor Payment Checks	\$ 327,337.36
Voids	-
Electronic Fund Transfers (EFT)	325,494.34
Electronic Wires	49,946.82
Total	<u>\$ 702,778.52</u>

Approved by:

Monica Molina
Finance Manager/Treasurer

Date:

5/30/2023

Approved by:

Tracy Martinez
Mayor

Date:

Attachments: Check Registers

Bank : gunion GENERAL ACCOUNT UNION BANK

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
3873	5/10/2023	ida01	IDAHO STATE TAX COMMISSION Ben170358	4/7/2023	IDAHO STATE TAX COMMISSION	205.34	205.34
		Voucher: 3873					
3877	5/10/2023	ida01	IDAHO STATE TAX COMMISSION Ben170514	4/21/2023	IDAHO STATE TAX COMMISSION	196.34	196.34
		Voucher: 3877					
5577	5/10/2023	hea02	HEALTH NET BFC29A May23	5/1/2023	HEALTHNET MAY PREMIUMS	26,450.59	26,450.59
		Voucher: 5577					
5578	5/10/2023	kai01	KAISER PERMANENTE 475311858565	5/1/2023	KAISER MAY PREMIUMS	15,275.93	15,275.93
		Voucher: 5578					
5579	5/10/2023	mut01	MUTUAL OF OMAHA 001521176213	5/1/2023	MUTUAL OF OMAHA MAY LIFE IN	3,921.47	3,921.47
		Voucher: 5579					
5580	5/10/2023	pri11	PRINCIPAL FINANCIAL GROUP, P11003938may23	5/1/2023	PRINCIPAL DENTAL VISION MAY	4,250.83	4,250.83
		Voucher: 5580					
5581	5/10/2023	sun11	SUN LIFE ASSURANCE CO, OF C,915639May23	5/1/2023	SUNLIFE FIRE LIFE MAY PREMIL	48.00	48.00
		Voucher: 5581					
Sub total for GENERAL ACCOUNT UNION BANK:							50,348.50

7 checks in this report.

Grand Total All Checks: 50,348.50

APPROVED
By M. Santos at 11:59 am, May 10, 2023

Bank : eunion EFT GENERAL ACCOUNT UNIC

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
4924	5/12/2023	als02	ALS GROUP USA CORP	522302069	4/21/2023	WATER SAMPLING APR	496.00	496.00
		Voucher: 4924						
4925	5/12/2023	cdw01	CDW GOVERNMENT	HZ58756	4/13/2023	TONER SUPP PW	205.70	205.70
		Voucher: 4925						
4926	5/12/2023	cof01	COFFEE AMBASSADOR, INC.	INV33558	4/24/2023	COFFEE - CH	251.43	251.43
		Voucher: 4926						
4927	5/12/2023	cor11	CORODATA MEDIA STORAGE	DS1305147	4/30/2023	STORAGE SRVCS APR	232.89	232.89
		Voucher: 4927						
4928	5/12/2023	dix01	DIXIELINE LUMBER CO	06-0506328	5/8/2023	FLAG SUPPLIES CS	191.81	
		Voucher: 4928		06-0503727	4/18/2023	BLDG MAINT SUPP PW	112.36	
				06-0504767	4/26/2023	MAINT/REPAIR SUPP PW	112.25	
				06-0503306	4/14/2023	SMALL TOOLS PW	11.61	428.03
4929	5/12/2023	ful01	KURT MORGAN	40581	5/3/2023	BUSINESS CARDS	69.46	69.46
		Voucher: 4929						
4930	5/12/2023	pru01	PRUDENTIAL OVERALL SUPP	132187163	5/5/2023	UNIFORMS PW	80.00	
		Voucher: 4930		132185914	4/28/2023	UNIFORMS PW	63.34	
				132187161	5/5/2023	FLOOR MATS PW	15.47	
				132187162	5/5/2023	SHOP TOWELS PW	3.72	162.53
4931	5/12/2023	uni03	SAN DIEGO - UNION TRIBUNE	7926994	4/12/2023	AD PUBLIC HEARING	278.40	
		Voucher: 4931		7926171	4/6/2023	DRB AGENDA	47.69	326.09
4932	5/12/2023	uti01	UTILITY SPECIALISTS INC	23658	4/30/2023	UP - 1A STRATFORD - MAR	18,837.75	
		Voucher: 4932		23659	4/30/2023	UP - X1A CREST - MAR	15,906.00	34,743.75
4933	5/12/2023	pav05	VAIDA PAVOLAS	2023-01	4/14/2023	CC MTG MINUTES 3/14-4/14/2	660.00	660.00
		Voucher: 4933						
4934	5/12/2023	wex01	WEX BANK	0496-00-495760	5/6/2023	GAS & OIL FIRE APR/MAY	1,186.60	1,186.60
		Voucher: 4934						
total for EFT GENERAL ACCOUNT UNION BANK:								38,762.48

Bank : qunion GENERAL ACCOUNT UNION B,

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
136524	5/12/2023	ame13	AMERICAN PUBLIC WORKS A757780	3/2/2023	MBRSHIP J BRIDE PW	264.00	264.00
		Voucher: 136524					
136525	5/12/2023	sbc03	AT&T 9391059863	5/1/2023	TELEPHONE APR	395.89	395.89
		Voucher: 136525					
136526	5/12/2023	bkm01	BKM OFFICEWORKS LLC 762321	3/24/2023	PW WORK STATIONS	1,233.76	1,233.76
		Voucher: 136526					
136527	5/12/2023	cal81	CALLTOWER INC 201397972	4/26/2023	TELEPHONE MAY	3,049.85	3,049.85
		Voucher: 136527					
136528	5/12/2023	chc01	CH COURT TECH INC 6385	4/28/2023	WINDSCREEN INSTALL	8,165.00	8,165.00
		Voucher: 136528					
136529	5/12/2023	cha71	CHARTER COMM HOLDINGS 184484100601288	5/1/2023	CABLE TV CS MAY	47.69	47.69
		Voucher: 136529					
136530	5/12/2023	coo14	COOPERATIVE PERSONNEL 50009498	4/28/2023	HR CONSULTING MAR	6,000.00	6,000.00
		Voucher: 136530					
136531	5/12/2023	hds01	CORE & MAIN LP S724225	4/27/2023	MAINT/REPAIR SUPP PW	556.80	556.80
		Voucher: 136531					
136532	5/12/2023	cor07	CORODATA RECORDS MGT 11RS4899469	4/30/2023	STORAGE SRVCS APR	150.51	150.51
		Voucher: 136532					
136533	5/12/2023	cou16	COUNTY OF SAN DIEGO - RE(23DELMANGRC	5/1/2023	NGRCS INFRASTRUCTURE C	50,500.83	
		Voucher: 136533	23CTOFDMM10	5/1/2023	RCS RADIO MAINT SRVC CS	2,392.26	52,893.09
136534	5/12/2023	dai03	DAILY DIRECT MAIL 11402-4	5/9/2023	UTILITY BILLS APR	330.00	
		Voucher: 136534	11402-5	5/9/2023	UTILITY BILLS MAY	215.00	545.00
136535	5/12/2023	com04	DEL MAR COMMUNITY CONN105092023	5/9/2023	HOUSING PROG 3RD QTR	3,500.00	3,500.00
		Voucher: 136535					
136536	5/12/2023	gal02	GALLS LLC 024322841	4/28/2023	UNIFORM PANTS PRKG ENF	76.56	76.56
		Voucher: 136536					
136537	5/12/2023	ats01	GARDA CL WEST LOCKBOX #10736033	5/1/2023	ARMORED SRVCS MAY	646.84	646.84
		Voucher: 136537					
136538	5/12/2023	kin02	KING GRAPHICS 46597	5/3/2023	UNIFORMS LFGRDS CS	418.00	
		Voucher: 136538	46598	5/3/2023	UNIFORMS LFGRDS CS	370.60	788.60
136539	5/12/2023	kir51	KIRKLAND EVENT AND DEST 05082023	5/8/2023	REFUND REF DEPOSIT PHCC	800.00	800.00
		Voucher: 136539					
136540	5/12/2023	man12	MANERI TRAFFIC CONTROL 118167	5/2/2023	CUSTOM TRAFFIC SIGNS PW	275.84	275.84
		Voucher: 136540					

Bank : **union GENERAL ACCOUNT UNION B**, (Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
136541	5/12/2023	mik03	MIKHAIL OGAWA ENGINEERIM10751	5/1/2023	SSMP SRVCS APR	2,075.45	
	Voucher:	136541	10750	5/1/2023	FOG SRVCS APR	875.00	2,950.45
136542	5/12/2023	par51	PARKWOOD LANDSCAPE MAI104418	3/31/2023	LANDSCAPNG SRVCS MAR	14,916.00	
	Voucher:	136542	104524	4/30/2023	LANDSCAPNG SRVCS APR	14,916.00	29,832.00
136543	5/12/2023	por05	PORTILLO CONCRETE INC 2212-2821	5/3/2023	ASPHALT REPAIRS FY23	14,500.00	
	Voucher:	136543	2212-2825	5/3/2023	ASPHALT REPAIRS FY23	3,997.97	18,497.97
136544	5/12/2023	ps001	PSOMAS 194936	4/13/2023	WTR / WASTEWTR / PAVING	1,667.50	1,667.50
	Voucher:	136544					
136545	5/12/2023	rcp01	RCP BLOCK & BRICK INC. 32834103	4/19/2023	BULK DECOMPOSED GRANIT	184.10	184.10
	Voucher:	136545					
136546	5/12/2023	san138	SAN DIEGO ELEVATOR & LIFT2351	4/30/2023	ELEVATOR MAINT CH APR	200.00	200.00
	Voucher:	136546					
136547	5/12/2023	sdq02	SAN DIEGO GAS & ELECTRIC 0067 3735 0888	5/4/2023	UTILITIES APR	290.49	
	Voucher:	136547	0012 6209 1548	5/2/2023	UTILITIES APR	92.66	
			0099 5222 5392	5/4/2023	UTILITIES APR	19.32	
			0085 7750 3585	5/4/2023	UTILITIES APR	17.77	
			0066 5491 5032	5/4/2023	UTILITIES APR	11.32	431.56
136548	5/12/2023	san75	SAN DIEGO MAIN 05012023	5/1/2023	POSTAGE FY23	5,000.00	5,000.00
	Voucher:	136548					
136549	5/12/2023	dar02	SANDRA S RAMEY 0502236051	5/2/2023	DEAD ANIMAL REMOVAL APR	159.68	159.68
	Voucher:	136549					
136550	5/12/2023	sou08	SOUTHWEST SIGNAL SERVIC82501	4/30/2023	CV CROSSWALK SIGNAL REF	9,500.00	
	Voucher:	136550	82502	4/30/2023	TRAFFIC SIGNAL MAINT APR	472.50	
			82503	4/30/2023	TRAFFIC SIGNAL MAINT APR	215.00	10,187.50
136551	5/12/2023	ste08	STEPHEN DALTON ARCHITEC00004	5/3/2023	HOUSING FEASIBILITY APR	2,137.20	2,137.20
	Voucher:	136551					
136552	5/12/2023	t-mo01	T-MOBILE USA INC 980755647	4/21/2023	TELEPHONE APR	11.90	11.90
	Voucher:	136552					
136553	5/12/2023	und01	UNDERGROUND SERVICE ALI420230219	5/1/2023	CONT SRVCS APR	57.25	57.25
	Voucher:	136553					
136554	5/12/2023	wes29	WEST COAST ARBORISTS IN(198045	3/15/2023	TREE MAINT 3/1-3/15/23	11,214.00	
	Voucher:	136554	199013	4/15/2023	TREE MAINT 4/1-4/15/23	3,723.50	14,937.50
Sub total for GENERAL ACCOUNT UNION BANK:							165,644.04

42 checks in this report.

Grand Total All Checks: 204,406.52

MG 5/10/23

Bank : eunion EFT GENERAL ACCOUNT UNIC

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
4935	5/19/2023	kay01	ADAM KAYE	APR-23	4/1/2023	COMM SRVCS APR	2,800.00
	Voucher:	4935		MAR-23	3/1/2023	COMM SRVCS MAR	2,150.00
4936	5/19/2023	del76	DE LAGE LANDEN FINANCIAL	79755224	5/6/2023	COPIER CH MAY	715.04
	Voucher:	4936					715.04
4937	5/19/2023	dev02	DEVANEY PATE MORRIS & CA	8164	5/11/2023	CITY ATTORNEY APR	5,072.50
	Voucher:	4937		8180	5/11/2023	CITY ATTORNEY APR	4,404.50
				8167	5/11/2023	CITY ATTORNEY APR	1,378.00
				8169	5/11/2023	CITY ATTORNEY APR	585.60
				8165	5/11/2023	CITY ATTORNEY APR	572.00
				8166	5/11/2023	CITY ATTORNEY APR	73.50
							12,086.10
4938	5/19/2023	dix01	DIXIELINE LUMBER CO	06-0502822	4/13/2023	VEH MAINT SUPP PW	873.31
	Voucher:	4938		06-0507007	5/11/2023	BLDG MAINT/REPAIR SUPP P	255.80
				06-0503379	4/17/2023	SMALL TOOLS PW	207.45
				06-0506220	5/5/2023	CONCRETE SUPP PW	145.89
				06-0505297	4/30/2023	LUMBER SUPP PW	74.47
				06-0507253	5/15/2023	DOOR REPAIR SUPP PHCC	69.92
				06-0506694	5/10/2023	BLDG MAINT SUPP CS	57.02
				06-0505930	5/4/2023	BLDG MAINT/REPAIR SUPP P	40.59
				06-0506676	5/9/2023	BLDG MAINT SUPP CS	36.46
				06-0505893	5/4/2023	BLDG MAINT SUPP FIRE	22.76
				06-0503517	4/17/2023	HRDWR SUPP PW	14.06
				06-0506426	5/9/2023	HRDWR SUPP PW	11.73
				06-0503515	4/21/2023	VEH MAINT SUPP PW	-836.83
							972.63
4939	5/19/2023	kle01	KLEINFELDER	1423757	4/12/2023	CDM BRIDGE MAR	64,158.46
	Voucher:	4939					64,158.46
4940	5/19/2023	lou01	LOUKELTON DISTRIBUTING	79901	4/20/2023	JANITORIAL SUPP PW	1,275.72
	Voucher:	4940		79910	4/24/2023	JANITORIAL SUPP PW	943.13
				79968	5/8/2023	JANITORIAL SUPP PW	474.91
				79938	5/1/2023	JANITORIAL SUPP PW	459.20
				79902	4/21/2023	JANITORIAL SUPP PW	190.31
							3,343.27
4941	5/19/2023	uni03	SAN DIEGO - UNION TRIBUNE	7930676	5/3/2023	DRB AGENDA	63.16
	Voucher:	4941					63.16
4942	5/19/2023	san03	SAN DIEGO COUNTY WATER	.0423-2	5/8/2023	RAW WATER APR	113,845.77
	Voucher:	4942					113,845.77

Bank : eunion EFT GENERAL ACCOUNT UNIC (Continued)

<u>Check #</u>	<u>Date</u>	<u>Vendor</u>	<u>Invoice</u>	<u>Inv Date</u>	<u>Description</u>	<u>Amount Paid</u>	<u>Check Total</u>	
4943	5/19/2023	wex01 Voucher: 4943	WEX BANK	0496-00-496530	5/6/2023	GAS & OIL PW MAY	4,739.56	4,739.56
total for EFT GENERAL ACCOUNT UNION BANK:							204,873.99	

Bank : gunion GENERAL ACCOUNT UNION B.

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
136555	5/19/2023	ace02	ACE UNIFORMS LLC	SD0124299	5/9/2023	UNIFORM JACKETS CS	924.35
	Voucher:	136555		VS0105284	4/20/2023	UNIFORMS FIRE	646.10
				VS0105715	5/4/2023	UNIFORM SHIRT FIRE	29.22
							1,599.67
136556	5/19/2023	zep01	ACUITY SPECIALTY PRODUC	9008518306	5/1/2023	CLEANING SUPP FIRE	751.80
	Voucher:	136556		9008486425	4/20/2023	CLEANING SUPP FIRE	346.66
							1,098.46
136557	5/19/2023	res01	CALWEN INC, DBA RESCUE S	130931	1/30/2023	SWIFTWATER RESCUE SUPP	555.00
	Voucher:	136557					555.00
136558	5/19/2023	cha71	CHARTER COMM HOLDINGS	184484100601285	5/1/2023	CABLE/INTERNET PW MAY	222.04
	Voucher:	136558					222.04
136559	5/19/2023	emb02	CHRIS GIAQUINTA, DBA EMB	F851345	5/9/2023	EMBROIDER UNIFORM SHIR	50.32
	Voucher:	136559					50.32
136560	5/19/2023	cin02	CINTAS	5158129474	5/11/2023	FIRST AID KIT SUPPLIES PW	93.55
	Voucher:	136560					93.55
136561	5/19/2023	sol01	CITY OF SOLANA BEACH	220445	1/23/2023	PALOMAR TRAINING FALL FY	142.00
	Voucher:	136561					142.00
136562	5/19/2023	phi01	CLEANEARTH	72403787525	5/9/2023	HSHLD HAZ WASTE MAR	108.22
	Voucher:	136562					108.22
136563	5/19/2023	cou01	COUNTY OF SAN DIEGO	APR-23	5/15/2023	PARKING BAIL APR	27,757.00
	Voucher:	136563					27,757.00
136564	5/19/2023	cou16	COUNTY OF SAN DIEGO - RE	23CTOFDMC10	5/1/2023	RCS PAGING SRVCS - APR	70.00
	Voucher:	136564					70.00
136565	5/19/2023	cou03	COUNTY OF SAN DIEGO-A/RE	202300280	4/7/2023	RECORDING FEE MAR	8.00
	Voucher:	136565		202300338	5/3/2023	RECORDING FEE APR	2.00
							10.00
136566	5/19/2023	end01	ENDURANT SPORTS LLC, DB	2281	5/1/2023	10' SURF RESCUE BOARDS C	3,580.00
	Voucher:	136566					3,580.00
136567	5/19/2023	ent02	ENTENMANN-ROVIN CO.	0173159-IN	4/28/2023	UNIFORM FIRE	278.14
	Voucher:	136567		0163730-IN	2/3/2022	BADGE FIRE	273.67
							551.81
136568	5/19/2023	fer07	FERGUSON ENTERPRISES	IN0825137	5/1/2023	WATER METER PARTS	407.81
	Voucher:	136568		0819903-2	5/1/2023	WATER METER PARTS	140.16
							547.97
136569	5/19/2023	int09	GREGORY CONLEY, DBA INT	E381	5/5/2023	SCADA SYS MAINT MAR/APR	1,784.36
	Voucher:	136569					1,784.36
136570	5/19/2023	hel04	HELIX ENVIRONMENTAL PLAN	118202	4/28/2023	BIO REVIEW AREA X1A APR	12,505.88
	Voucher:	136570		118275	4/28/2023	RIVER PATH ENV ENG PHASE	6,472.50
							18,978.38
136571	5/19/2023	tom04	JAMES TOMES	05152023	5/15/2023	EVENT REFUND REF PHCC	876.00
	Voucher:	136571					876.00

Bank : **gunion GENERAL ACCOUNT UNION B**, (Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
136572	5/19/2023	gaa03	KRISTEN GAARDER	05112023	5/11/2023	EVENT REFUND REF PHCC	588.00	588.00
		Voucher:	136572					
136573	5/19/2023	lee16	LEE, MATTHEW & COLLETTE	Ref000162520	5/11/2023	UTILITY REFUND	31.82	31.82
		Voucher:	136573					
136574	5/19/2023	mar11	MARSHALLS INDUSTRIAL HAF763344/1		5/10/2023	HRDWR SUPP PW	171.55	
		Voucher:	136574	763411/1	5/11/2023	VEH MAINT SUPP PW	32.72	204.27
136575	5/19/2023	div03	MICHAEL Y TIMM, DBA DIVE	C05112023	5/11/2023	FREEDIVING COURSE LFGRI	850.00	850.00
		Voucher:	136575					
136576	5/19/2023	mot02	MOTOROLA SOLUTIONS INC	8281612865	4/20/2023	PORTABLE RADIOS PW	8,541.17	8,541.17
		Voucher:	136576					
136577	5/19/2023	msc01	MSC JANITORIAL SERVICE	IN2023-4-13	4/25/2023	JANITORIAL SRVCS APR	497.10	497.10
		Voucher:	136577					
136578	5/19/2023	nat18	NATIONAL FOUNDATION FOR	05152023	5/15/2023	REFUND REF DEPOSIT PHCC	800.00	800.00
		Voucher:	136578					
136579	5/19/2023	nv501	NV5 INC	329613	5/9/2023	BEACH COLONY PED DESIGN	2,668.75	2,668.75
		Voucher:	136579					
136580	5/19/2023	off03	OFFICE DEPOT	310448159001	5/1/2023	OFFICE SUPPLIES CH	104.90	
		Voucher:	136580	310454005001	5/1/2023	OFFICE SUPPLIES CH	21.96	126.86
136581	5/19/2023	par35	PARADIGM MECHANICAL	COF5596	4/24/2023	HVAC SRVCS CH	670.00	670.00
		Voucher:	136581					
136582	5/19/2023	pso01	PSOMAS	195802	5/9/2023	WTR / WASTEWTR / PAVING	10,185.00	10,185.00
		Voucher:	136582					
136583	5/19/2023	sdq02	SAN DIEGO GAS & ELECTRIC	0081 7377 2988	5/8/2023	UTILITIES APR	5,785.74	
		Voucher:	136583	0066 5491 6833	5/8/2023	UTILITIES APR	4,245.15	
				0066 5392 2766	5/8/2023	UTILITIES APR	935.04	
				0069 0908 1676	5/8/2023	UTILITIES APR	350.33	
				0096 3381 7034	5/8/2023	UTILITIES FEB/APR	22.05	
				0065 9549 9411	5/8/2023	UTILITIES FEB/APR	4.74	11,343.05
136584	5/19/2023	sde01	SD ELECTRIC BIKE LLC	220000030670	5/15/2023	BIKE MAINT PRKG ENF	270.34	
		Voucher:	136584	220000030671	5/15/2023	WHEEL MAINT PRKG ENF	104.76	375.10
136585	5/19/2023	sou11	SOUTH BAY FOUNDRY, INC.	0227838	4/21/2023	BEEHIVE GRATE PW	1,091.59	1,091.59
		Voucher:	136585					
136586	5/19/2023	sta36	STANDARD PLUMBING SUPPL	TWKG90	5/3/2023	MAINT/REPAIR SUPP PW	167.17	
		Voucher:	136586	TWKH05	5/3/2023	MAINT/REPAIR SUPP PW	3.10	170.27

Bank : qunion GENERAL ACCOUNT UNION B (Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
136587	5/19/2023	ter01	TERMINIX INT CO LTD, PARTM	433252349	5/9/2023	PEST CONTROL SRVCS CH	140.00
	Voucher:	136587		433262724	5/9/2023	PEST CONTROL SRVCS PW	124.00
				433249177	5/9/2023	PEST CONTROL SRVCS CS	113.00
				433252420	5/9/2023	PEST CONTROL SRVCS LIBR	100.80
				433249268	5/9/2023	PEST CONTROL SRVCS PHC	94.00
							571.80
136588	5/19/2023	dis05	THE REINALT-THOMAS CORP	1555621	4/18/2023	TIRE MAINT PW VEH #81	715.23
	Voucher:	136588					715.23
136589	5/19/2023	uni31	UNITED SITE SRVCS OF, CAL	114-13576135	4/19/2023	PORTABLE RESTROOM SRVC	1,450.85
	Voucher:	136589		114-13589564	5/4/2023	PORTABLE RESTROOM SRVC	565.25
							2,016.10
Sub total for GENERAL ACCOUNT UNION BANK:							99,470.89

44 checks in this report.

Grand Total All Checks:

304,344.88

DJG 5-17-23

Bank : ~~gunion~~ GENERAL ACCOUNT UNION B,

<u>Check #</u>	<u>Date</u>	<u>Vendor</u>	<u>Invoice</u>	<u>Inv Date</u>	<u>Description</u>	<u>Amount Paid</u>	<u>Check Total</u>
136590	5/19/2023	usb03 Voucher: 136590	US BANK CORP PYMT SYSTE 4246-0445-5565	4/24/2023	US BANK CHARGES APR	11,510.50	11,510.50
Sub total for GENERAL ACCOUNT UNION BANK:							11,510.50

1 checks in this report.

Grand Total All Checks: 1,510.50 *May 5-18-23*

Bank : union EFT GENERAL ACCOUNT UNIC

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total	
4952	5/26/2023	bea10	BEACH COLONY NUMBER 1 L05182023-1	5/18/2023	RENTAL HSG JUN	2,271.00		
	Voucher:	4952	05182023-2	5/18/2023	RENTAL HSG JUN	2,058.00	4,329.00	
4953	5/26/2023	dev02	DEVANEY PATE MORRIS & CA8179	5/11/2023	LEGAL FEES APR	43,083.20		
	Voucher:	4953	8181	5/11/2023	CITY ATTORNEY APR	6,840.80		
			8168	5/11/2023	CITY ATTORNEY APR	3,484.60		
			8182	5/11/2023	CITY ATTORNEY APR	48.80	53,457.40	
4954	5/26/2023	dix01	DIXIELINE LUMBER CO	06-0507092	5/12/2023	MAINT/REPAIR SUPP PW	262.52	
	Voucher:	4954	06-0507623	5/17/2023	PAINT SUPP PW	46.22		
			06-0506896	5/11/2023	TAPE MEASURE PW	42.54		
			06-0506809	5/10/2023	BLDG MAINT/REPAIR SUPP P	34.82		
			06-0507033	5/11/2023	BLDG MAINT/REPAIR SUPP P	19.36		
			06-0507641	5/17/2023	BLDG MAINT/REPAIR SUPP P	14.55		
			06-0506784	5/10/2023	PAINT SUPP PW	13.97	433.98	
4955	5/26/2023	lou01	LOUKELTON DISTRIBUTING I179998	5/15/2023	JANITORIAL SUPP PW	1,189.81		
	Voucher:	4955	79996	5/15/2023	JANITORIAL SUPP PW	1,069.35	2,259.16	
4956	5/26/2023	pru01	PRUDENTIAL OVERALL SUPP 132188436	5/12/2023	UNIFORMS PW	80.65	80.65	
	Voucher:	4956						
4957	5/26/2023	tru09	TRUE NORTH COMPLIANCE SDM23-03	5/17/2023	BLDG CODE PC & INSP 3/01-3	20,356.00	20,356.00	
	Voucher:	4957						
4958	5/26/2023	pav05	VAIDA PAVOLAS	2023-02	5/17/2023	CC MTG MINUTES 4/15-5/15/2	540.00	540.00
	Voucher:	4958						
total for EFT GENERAL ACCOUNT UNION BANK:							81,456.19	

Bank : **gunion GENERAL ACCOUNT UNION B,**

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
136591	5/26/2023	adt02	ADT SECURITY SERVICES	991965962	5/13/2023	ALARM 1700 COAST JUN/AUC	257.94
		Voucher: 136591	991971287	5/13/2023	ALARM PW JUN	112.77	370.71
136592	5/26/2023	agr05	AGRI SERVICE INC	117500	4/25/2023	EVERBLOOM MULCH SUPP F	494.31
		Voucher: 136592	117839	5/9/2023	EVERBLOOM MULCH SUPP F	494.31	988.62
136593	5/26/2023	ale04	ALESHIRE & WYNDER LLP	75756	5/17/2023	ATTORNEY SRVCS APR	5,511.83
		Voucher: 136593					5,511.83
136594	5/26/2023	sbc03	AT&T	9391054486	5/20/2023	TELEPHONE MAY	184.30
		Voucher: 136594					184.30
136595	5/26/2023	sbc03	AT&T	9391026229	5/20/2023	TELEPHONE MAY	102.23
		Voucher: 136595					102.23
136596	5/26/2023	sbc03	AT&T	9391031502	5/20/2023	TELEPHONE MAY	65.40
		Voucher: 136596					65.40
136597	5/26/2023	sbc03	AT&T	9391026230	5/20/2023	TELEPHONE MAY	52.89
		Voucher: 136597					52.89
136598	5/26/2023	sbc03	AT&T	9391031506	5/20/2023	TELEPHONE MAY	51.90
		Voucher: 136598					51.90
136599	5/26/2023	sbc03	AT&T	9391026231	5/20/2023	TELEPHONE MAY	51.90
		Voucher: 136599					51.90
136600	5/26/2023	sbc03	AT&T	9391026228	5/20/2023	TELEPHONE MAY	26.72
		Voucher: 136600					26.72
136601	5/26/2023	sbc03	AT&T	9391065520	5/20/2023	TELEPHONE MAY	25.17
		Voucher: 136601					25.17
136602	5/26/2023	bur15	DAVID BURNINGHAM	05102023-01	5/10/2023	APPRaisal SRVCS RVRPATH	2,950.00
		Voucher: 136602					2,950.00
136603	5/26/2023	lee01	DCL ENTERPRISES INC DBA,	0000092452	5/10/2023	GEN MAINT/REPAIR SRVCS	224.15
		Voucher: 136603					224.15
136604	5/26/2023	del06	DEL MAR AUTOMOTIVE SERV	44981	5/12/2023	VEHICLE MAINT PW #73	343.22
		Voucher: 136604	44892	5/1/2023	VEHICLE MAINT PW #75	278.22	
			44933	5/5/2023	VEHICLE MAINT PW #73	80.55	701.99
136605	5/26/2023	del02	DEL MAR BLUE PRINT CO, INC	577884	5/12/2023	CUSTOM SIGN CS	132.68
		Voucher: 136605	578464	5/22/2023	NO PARKING JG SIGN	54.38	
			578268	5/19/2023	PARK/PHCC BALLOON SIGNE	46.76	
			578268	5/18/2023	BALLOON SIGNS PHCC	46.76	280.58
136606	5/26/2023	duk01	DUDEK & ASSOCIATES	202303264	5/16/2023	CV STORM DRAIN MONITORI	1,805.00
		Voucher: 136606					1,805.00

Bank : gunion GENERAL ACCOUNT UNION B, (Continued)

Check #	Date	Vendor	Invoice	Inv Date	Description	Amount Paid	Check Total
136607	5/26/2023	bak10 Voucher: 136607	LARRY BAKER 05232023	5/23/2023	REFUND REF CITATION #411'	63.00	63.00
136608	5/26/2023	swa02 Voucher: 136608	MORRICE H SWARTZ 05182023	5/18/2023	RENTAL HSG JUN	1,770.00	1,770.00
136609	5/26/2023	con17 Voucher: 136609	OCCUPATIONAL HEALTH CTR79185856	5/10/2023	EMPLOYEE TESTING MAY	465.00	465.00
136610	5/26/2023	off03 Voucher: 136610	OFFICE DEPOT 306859715001	5/4/2023	OFFICE SUPPLIES PW	137.23	137.23
136611	5/26/2023	ost05 Voucher: 136611	OSTARI INC 501388	5/1/2023	PALO ALTO FIREWALL APR/JI	441.00	441.00
136612	5/26/2023	par35 Voucher: 136612	PARADIGM MECHANICAL COF5635	5/18/2023	HVAC SRVCS CH	795.24	795.24
136613	5/26/2023	pho01 Voucher: 136613	PHOENIX GROUP INFO SYSTI042023036	5/19/2023	CITE SRVCS APR	13,124.41	13,124.41
136614	5/26/2023	sdq01 Voucher: 136614	SAN DIEGO GAS & ELECTRIC 0042 2198 4063	5/17/2023	UTILITIES APR	4,740.12	4,740.12
136615	5/26/2023	sdq02 Voucher: 136615	SAN DIEGO GAS & ELECTRIC 0092 4576 5583	5/15/2023	UTILITIES APR	162.66	162.66
136616	5/26/2023	mac07 Voucher: 136616	SIDNEY A MACKIN 05182023	5/18/2023	RENTAL HSG JUN	1,343.00	1,343.00
136617	5/26/2023	spa01 Voucher: 136617	SPARKLETTS 18139543 05212	5/21/2023	WATER CH	33.47	33.47
136618	5/26/2023	uni28 Voucher: 136618	UNITED RENTALS INC 216537787-001	2/28/2023	SCISSOR LIFT RENTAL PW	763.97	763.97
136619	5/26/2023	wes29 Voucher: 136619	WEST COAST ARBORISTS INC(199482	4/30/2023	TREE MAINT 4/16-4/30/23	981.00	981.00
136620	5/26/2023	wes59 Voucher: 136620	WESTERN STATE BUILDERS I04	5/15/2023	TOT LOT RENOVATION PROJ	11,219.16	11,219.16
136621	5/26/2023	act03 Voucher: 136621	WILLIAMS SCOTSMAN INC 9017699664	5/15/2023	MOBILE OFFICE PW MAY/JUN	156.12	156.12
Sub total for GENERAL ACCOUNT UNION BANK:						49,588.77	

38 checks in this report.

Grand Total All Checks:

131,044.96
Dtg 5/24/23

Bank : gunion GENERAL ACCOUNT UNION B,

<u>Check #</u>	<u>Date</u>	<u>Vendor</u>	<u>Invoice</u>	<u>Inv Date</u>	<u>Description</u>	<u>Amount Paid</u>	<u>Check Total</u>
136622	5/26/2023	cha71	CHARTER COMM HOLDINGS	8448410060151	5/15/2023	FIBER CONNECTION CS APR	710.12
	Voucher:	136622		8448410060151	5/14/2023	METRO ETHERNET CS MAY	355.06
				8448410060174	5/13/2023	INTERNET CS MAY	57.98
						Sub total for GENERAL ACCOUNT UNION BANK:	1,123.16

1 checks in this report.

Grand Total All Checks:

May 5/24/23

1,123.16



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Karen Falk, Principal Engineer
Mariel Cairns, Management Analyst
Via Ashley Jones, City Manager

DATE: June 5, 2023

SUBJECT: Approval of Fiscal Year 2023-24 Senate Bill 1 Funding for the City's Annual Pavement Rehabilitation Project

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council adopt a Resolution (Attachment A) adopting the list of projects that includes the Fiscal Year (FY) 2023-24 Citywide Annual Pavement Rehabilitation Project to be funded by Senate Bill 1 (SB 1) from the State of California.

DISCUSSION/ANALYSIS:

SB 1, the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017), was passed by the California State Legislature and signed into law by the Governor in April 2017, creating the State's Road Maintenance and Rehabilitation Account (RMRA). The purpose of SB 1 is to address the significant multi-modal transportation funding shortfalls statewide.

SB 1 provides supplemental funding to cities and counties for basic road maintenance, rehabilitation, and critical safety projects on the local streets and roads system. In order for cities to obtain SB 1 funds from the RMRA, the law requires cities to maintain their existing commitment of local funds for street, road, and highway purposes. The amount of this commitment is calculated pursuant to Streets & Highways Code Section 2036, and the City's General Fund FY 2022-23 expenditures on streets and roadways have fulfilled this requirement.

In addition, SB 1 requires cities to develop a list of projects proposed to be funded by RMRA. If a city does not submit the list of projects as required each fiscal year, the city forfeits the funding. As such, the City must identify and adopt by resolution a list of projects proposed to be funded from RMRA.

For FY 2023-24, the City is eligible to receive an estimated \$97,422 of RMRA funding based on SB 1 Local Streets and Roadways (LSR) FY 2023-24 Revenue Projections (Attachment B), which is subject to change by the State of California pending funds available. Staff proposes to use this RMRA funding to supplement pavement rehabilitation

City Council Action:

costs for areas included in the FY 2023-24 Citywide Annual Pavement Rehabilitation Project. Pavement rehabilitation segments will go out to bid this summer as part of the Water, Wastewater, and Paving Improvements Capital Improvement Project. This funding will supplement the cost of asphalt overlay, pavement marking, drainage, as well as other roadway improvements at various locations. The details of the identified project that staff proposes be funded by SB 1 revenues for FY 2023-24 are listed in the following table:

Project Title	Project Description	Project Location(s)	Estimated Project Construction Schedule	Estimated Project Useful Life
FY 2023-24 Citywide Annual Pavement Rehabilitation Project	City of Del Mar Pavement Rehabilitation Program City Account: 40.7000.7009	Camino del Mar, Carmel Valley Road, Coast Boulevard, Jimmy Durante Boulevard, and minor repairs throughout the City	<u>Start:</u> 08/23 <u>Completion:</u> 04/24 (based on the component being funded with RMRA funds)	25 years

PRIOR CITY COUNCIL REVIEW:

On May 15, 2022, the City Council adopted Resolution 2022-28 adopting the list of projects that included the FY 2022-23 Citywide Annual Pavement Rehabilitation Project to receive SB 1 funding from the State of California.

FISCAL IMPACT:

There is no fiscal impact or action to be taken by the City Council related to this item. SB 1 funding for FY 2023-24 will be included in the FY 2023-24 Operating and Capital Budget for Council consideration and adoption on June 19, 2023.

ENVIRONMENTAL IMPACT:

The proposed City Council action does not constitute a “project” under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

The Annual Pavement Management Program is a Tier 1 City Council priority item.

ATTACHMENTS:

- Attachment A – Resolution 2023-XX
- Attachment B – LSR Projected FY 2023-24 Revenues

RESOLUTION NO. 2023-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2023-24 FUNDED BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of the City of Del Mar (City) are aware of the projects proposed for funding in the community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City, will receive an estimated \$97,422 in RMRA funding in Fiscal Year 2023-24 from SB 1; and

WHEREAS, this is the seventh year in which the City is receiving SB 1 funding, which will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

WHEREAS, the City has undergone a public process to solicit public input regarding the community's transportation priorities/project list; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the community's priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City maintain and rehabilitate roads and active transportation infrastructure throughout the City this year, as well as many similar projects into the future; and

WHEREAS, the 2018 California Statewide Local Streets and Roads Needs Assessment found that the City's streets and roads are in good condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads into a better condition; and

WHEREAS, the SB 1 project list and City’s overall investment in local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide; and

WHEREAS, all locations listed are an estimate and have yet to be finalized.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar, California, that:

1. The foregoing recitals are true and correct.
2. The following list of newly proposed projects will be funded in part or solely with Fiscal Year 2023-24 Road Maintenance and Rehabilitation Account (RMRA) revenues:

Project Title	Project Description	Project Location(s)	Estimated Project Construction Schedule	Estimated Project Useful Life
FY 2023-24 Citywide Annual Pavement Rehabilitation Project	City of Del Mar Pavement Rehabilitation Program City Account: 40.7000.7009	Camino del Mar, Carmel Valley Road, Coast Boulevard, Jimmy Durante Boulevard, and minor repairs throughout the City	<u>Start:</u> 08/23 <u>Completion:</u> 04/24 (based on the component being funded with RMRA funds)	25 years

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Del Mar, California, at the Regular Meeting held this 5th day of June, 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, NESTOR MACHADO, Acting City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2023-XX, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 5th day of June, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Nestor Machado, Acting City Clerk
City of Del Mar

Local Streets and Roads - Projected FY2023-24 Revenues

Based on State Dept of Finance statewide revenue projections

Estimated January 2023

	Highway Users Tax Acct (HUTA) ⁽¹⁾ Streets & Highways Code					TOTAL HUTA	Road Mntnc Rehab Acct	TOTAL
	Sec2103 ⁽⁵⁾	Sec2105 ⁽³⁾	Sec2106 ⁽³⁾	Sec2107 ⁽³⁾	Sec2107.5 ⁽⁴⁾			
SAN DIEGO COUNTY								
CARLSBAD	1,145,370	758,467	489,981	911,020	10,000	3,314,838	2,857,289	6,172,127
CHULA VISTA	2,742,754	1,816,260	1,166,635	2,181,570	10,000	7,917,219	6,842,191	14,759,410
CORONADO	233,642	154,719	103,771	185,838	5,000	682,970	582,854	1,265,823
DEL MAR	39,053	25,861	21,343	31,062	1,000	118,318	97,422	215,741
EL CAJON	1,052,084	696,693	450,464	836,821	10,000	3,046,061	2,624,572	5,670,634
ENCINITAS	609,572	403,661	263,016	484,850	7,500	1,768,599	1,520,665	3,289,265
ESCONDIDO	1,494,932	989,948	638,056	1,189,059	10,000	4,321,994	3,729,320	8,051,314
IMPERIAL BEACH	262,677	173,945	116,070	208,931	6,000	767,623	655,284	1,422,907
LA MESA	599,326	396,876	258,676	476,700	7,500	1,739,078	1,495,105	3,234,183
LEMON GROVE	270,673	179,241	119,458	215,292	6,000	790,664	675,233	1,465,897
NATIONAL CITY	609,136	403,372	262,831	484,503	7,500	1,767,343	1,519,578	3,286,921
OCEANSIDE	1,714,790	1,135,539	731,188	1,363,933	10,000	4,955,450	4,277,788	9,233,238
POWAY	483,169	319,956	209,471	384,310	6,000	1,402,906	1,205,334	2,608,240
SAN DIEGO	13,679,316	9,058,482	5,799,382	10,880,443	20,000	39,437,623	34,125,003	73,562,626
SAN MARCOS	932,646	617,601	399,871	741,821	7,500	2,699,439	2,326,619	5,026,059
SANTEE	588,020	389,388	253,886	467,707	7,500	1,706,501	1,466,899	3,173,400
SOLANA BEACH	127,801	84,630	58,937	101,652	3,000	376,019	318,817	694,836
VISTA	993,817	658,108	425,782	790,476	10,000	2,878,183	2,479,217	5,357,400
SAN FRANCISCO COUNTY								
SAN FRANCISCO	8,660,408	5,734,947	2,198,109	6,888,435	20,000	23,501,899	21,604,623	45,106,522
SAN JOAQUIN COUNTY								
ESCALON	73,716	48,815	33,132	58,633	2,000	216,295	183,894	400,189
LATHROP	310,469	205,594	124,126	246,945	6,000	893,134	774,510	1,667,644
LODI	659,664	436,832	258,335	524,693	7,500	1,887,024	1,645,626	3,532,650
MANTECA	860,715	569,968	335,607	684,607	7,500	2,458,396	2,147,175	4,605,571
RIPON	158,341	104,854	65,657	125,944	4,000	458,796	395,005	853,800
STOCKTON	3,205,232	2,122,514	1,236,699	2,549,422	10,000	9,123,868	7,995,909	17,119,777
TRACY	936,808	620,357	364,853	745,131	7,500	2,674,650	2,337,002	5,011,652
SAN LUIS OBISPO COUNTY								
ARROYO GRANDE	181,688	120,314	88,675	144,513	4,000	539,190	453,246	992,436
ATASCADERO	305,019	201,985	145,611	242,610	6,000	901,225	760,914	1,662,138
EL PASO DE ROBLES	310,776	205,797	148,268	247,190	6,000	918,032	775,276	1,693,308
GROVER BEACH	126,394	83,698	63,149	100,533	3,000	376,773	315,307	692,080
MORRO BAY	104,543	69,229	53,062	83,153	3,000	312,988	260,799	573,786
PISMO BEACH	79,750	52,811	41,616	63,433	2,000	239,610	198,948	438,559
SAN LUIS OBISPO	472,209	312,698	222,793	375,592	6,000	1,389,293	1,177,994	2,567,287



City of Del Mar Staff Report

TO: Honorable Mayor and City Council Members

FROM: Emily Torres, Management Analyst
Clem Brown, Assistant City Manager
Via Ashley Jones, City Manager

DATE: June 5, 2023

SUBJECT: Agreements with the Del Mar Village Association for Destination Marketing and Economic Development

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council:

- 1) Approve an Agreement with the Del Mar Village Association (DMVA) for an initial three year term from July 1, 2023, through June 30, 2026, for Destination Marketing (Attachment A);
- 2) Approve an Agreement with the DMVA for an initial three year term from July 1, 2023, through June 30, 2026, for Economic Development Services (Attachment B);
- and 3) Authorize the City Manager to execute the Agreements.

DISCUSSION/ANALYSIS:

For many years, the City of Del Mar has partnered with DMVA to provide destination marketing and economic development and business support services for the betterment of Del Mar's businesses and the City's overall economic vitality. Below is a detailed description of the continued destination marketing and economic development/business support services to be provided to the City by DMVA over the next three years, with the option to extend the agreements by an additional two year period.

It should be noted that staff made the determination that DMVA's services under both proposed Agreements are exempt from the City's standard bid requirement because the services cannot be reasonably obtained from another source (Del Mar Municipal Code 7.04.090).

Destination Marketing/TOT

The City of Del Mar has long realized the value of the promotion of Del Mar as a tourist destination. As was especially highlighted during the pandemic, the City is heavily

City Council Action:

dependent on the TOT and sales tax revenue generated by visitors to the community, which are also two of the City's three largest sources of revenue.

A substantial portion of the City's General Fund revenues come from Transient Occupancy Tax (TOT) largely paid by tourists, which in normal, non-pandemic years equates to approximately 17% of the General Fund. Of all the City's revenue sources, TOT is the second highest source of revenue for the City overall, and is the highest source of tourism-based revenue that the City receives. The City's TOT contribution to the DMVA for destination marketing is a critically important way for the City to support and reinvest in the business community, with funds being generated by our local hotels, and an ongoing investment in the City's overall financial viability and success.

DMVA has overseen marketing and promotion efforts related to tourism since 2010, first via the Tourism Business Improvement District (TBID) until 2015, and since then under contract with the City. In October 2015, the City Council increased the TOT rate by 1% to a total of 12.5% and entered into a contract with DMVA, funded by the additional TOT, to become the Destination Marketing Organization for the City of Del Mar. In October 2019, the TOT rate was increased to 13%, and since then DMVA has received 1/13 of the total amount of TOT remitted to the City.

Remittances of TOT to the DMVA in recent years equated to \$237,847 in FY 2019, \$179,987 in FY 2020, \$137,853 in FY 2021 recognizing severe budget impacts due to COVID-19, and \$263,067 in FY 2022. TOT payments to DMVA for FY 2024 and FY 2025 are estimated to be approximately \$292,310 annually.

The proposed Destination Marketing Agreement scope of services, as further described in Attachment A, details the various methods of promotion, which are summarized below:

- Plan, oversee, and coordinate all marketing efforts promoting Del Mar Village as a destination through advertising, website, social media, special events, media promotions, and community and visitor relations to support a strong return for both Transient Occupancy Tax (TOT) and Sales Tax for the City of Del Mar.
- The destination programming includes:
 - Digital marketing, which includes web site, search strategies, social media, email marketing, digital assets, print marketing, and influencer marketing.
 - Special event promotion, which includes Downtown signature events, and cross promotions.
 - Design and destination guidance, which includes the holiday tree, holiday banners/décor, media, light pole banners, other banners/decor, and wayfinding signage; and
 - Industry research and reporting to the City.

Economic Development

Dating back to 2005, the City has been partnering with DMVA to provide economic development and business support services to the Del Mar business community, which

the City does not have capacity to directly provide like most other cities. In the past, DMVA has applied and to receive funding to provide these services through the City's Community Support Grant Program. However, because these are services that would otherwise be provided by the City (similar to the senior services provided by the DMCC), staff is recommending this partnership be formalized through a professional services agreement rather than a community funding grant which is really not appropriate in light of the services being provided.

Activities to be performed by the DMVA identified in the Agreement included as Attachment B, are summarized below:

- Serve as a resource for Del Mar businesses;
- Support new business development in the Del Mar Village;
- Continue existing and implement new programs to drive commerce in Downtown Del Mar/Del Mar Village and support fundraising initiatives for the Downtown;
- Partner with the City on Downtown improvements and programming; and
- Communicate and report to the City

FISCAL IMPACT:

There is no fiscal action to be taken by the City Council related to this agenda item. Sufficient budget for the Agreements are included in the proposed budget for Fiscal Year (FY) 2023-2024 and FY 2024-2025.

ENVIRONMENTAL REVIEW:

The proposed City Council action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

This is an operational item.

ATTACHMENTS:

Attachment A – Destination Marketing Agreement
Attachment B – Economic Development Agreement

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DEL MAR AND THE DEL MAR VILLAGE ASSOCIATION
FOR DESTINATION MARKETING SERVICES**

This Professional Services Agreement is made and entered into this 1st day of July 2023, by and between the City of Del Mar, a Charter City and a municipal corporation (“City”), and the Del Mar Village Association (“DMVA”) (collectively “Parties”).

WHEREAS, the City desires to enter into an agreement with DMVA to provide destination marketing services designed to promote tourism in Del Mar through various methods of promotion that includes digital advertising; international, national, and local event production and cross-promotion; communication and guidance of downtown destination; and management and reporting (“Services”). Said work is to be performed in accordance with the terms and conditions set forth below and as described in the Scope of Services, attached hereto as Exhibit “A” and incorporated herein; and

WHEREAS, the City has initially determined that DMVA is qualified by experience and ability to perform the services desired by City, and DMVA is willing to perform such services; and

WHEREAS, DMVA will conduct all the work as described and detailed in this Agreement to be provided to the City.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

1. SERVICES.

1.1 Scope of Services. DMVA shall perform the Services as set forth in the written Scope of Services, attached hereto as **Exhibit “A”** and incorporated herein. Such services shall be provided at the direction of the City.

1.2. City Modification of Scope of Services. City may order changes to the Scope of Services within the general scope of this Agreement consisting of additions, deletions, or other revisions. If such changes cause a change in the DMVA’s cost of, or time required for, completion of the Scope of Services, an equitable adjustment to DMVA’s compensation and/or contract time shall be made, subject to the City’s approval. All such changes shall be authorized in writing, executed by DMVA and City. If such a change results in an extension of the term of this Agreement or increases the maximum amount to be paid under this Agreement, no such change shall have any force or effect unless an amendment to this Agreement is approved by the City Council.

2. DURATION OF AGREEMENT.

2.1 Term, Time for Performance. This Agreement shall be effective for an initial period of three (3) years beginning July 1, 2023, through June 30, 2026. Upon satisfactory performance and written agreement of both parties, the Agreement may be extended for an additional two (2) year period.

Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

2.2 Delay. Any delay resulting from causes beyond the control of DMVA may merit an extension of time for the completion of the Scope of Services. When such delay occurs, DMVA shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the Consulting Services when justified by the circumstances provided that no extension of time shall be granted which would extend the time for performance beyond the date specified in section 2.1 above.

2.3 City's Right to Terminate for Default. Should DMVA be in default of any covenant or condition hereof, City may immediately terminate this Agreement for cause if DMVA fails to cure the default within ten (10) calendar days of receiving written notice of the default.

2.4 City's Right to Terminate without Cause. Without limiting its rights in the event of DMVA's default, City may terminate this Agreement, without cause, by giving written notice to DMVA. Such termination shall be effective upon receipt of the written notice. DMVA shall be compensated for all effort and material expended on behalf of City under the terms of this Agreement, up to the effective date of termination. All personal property remaining in City facilities or on City property thirty (30) days after the expiration or termination of this Agreement shall be, at City's election, considered the property of City.

3. PERFORMANCE AFTER TERMINATION. Upon termination of this Agreement as provided herein, DMVA shall, within such reasonable time period as may be directed by City Manager, complete those items of work which are in various stages of completion and which City Manager determines are necessary to be completed by DMVA to allow the project to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by DMVA shall be delivered to the City Manager, upon her request, as property of City.

4. COMPENSATION.

4.1 Total Amount. Compensation to DMVA will be one-thirteenth of the City's annual Transient Occupancy Tax (TOT) collection (revenue) to be paid as a lump sum monthly.

4.2 Additional Services. City may, as the need arises or in the event of an emergency, request additional services of DMVA. Should such additional services be required, Compensation therefore shall be paid to the DMVA in accordance with Scope of Services contained in Exhibit "A." City and DMVA shall agree to the costs prior to commencement of such work.

5. INDEPENDENT CONTRACTOR. DMVA is, for all purposes arising out of this Agreement, an independent contractor. The DMVA has and shall retain the right to exercise full control and supervision of all persons assisting the DMVA in the performance of said services hereunder, the City only being concerned with the finished results of the work being performed. Neither DMVA nor DMVA's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, DMVA being solely responsible

for all such matters, as well as, compliance with social security and income tax withholding and all other regulations and laws governing such matters.

6. STATEMENT OF EXPERIENCE. DMVA agrees and represents by executing Agreement that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent DMVA using the degree of care and skill ordinarily exercised by reputable DMVA's practicing in the same field of service in the State of California. Additionally, DMVA and all of DMVA's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

7. AUDIT OF RECORDS.

7.1 At any time during normal business hours and as often as may be deemed necessary, the DMVA shall make available to a representative of City for examination all of its records with respect to all matters covered by this Agreement and shall permit City to audit, examine, and/or reproduce such records. DMVA shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2 The DMVA shall include the City's right to audit under this section in any and all of their subcontracts and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY. All services performed by DMVA, including, but not limited to, all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by DMVA, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to DMVA, at the time that it was disclosed to DMVA by the City, (b) subsequently becomes publicly known through no act or omission of DMVA or (c) otherwise becomes known to DMVA other than through disclosure by the City. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the City. The sole purpose of this section is to prevent disclosure of City's confidential and proprietary information by DMVA or subcontractors.

9. CONFLICTS OF INTEREST.

9.1 DMVA shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. DMVA shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the DMVA has a financial interest as defined in Government Code § 87103. DMVA represents that it has no knowledge of any financial interests, which would require it to disqualify itself from any matter on which it might perform services for the City.

9.2 DMVA shall comply with all of the reporting requirements of the Political Reform Act. The DMVA shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the City's determination that the DMVA is subject to a conflict of interest code, if applicable. The DMVA shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the DMVA was subject to a conflict of interest code.

9.3 If, in performing the Consulting Services set forth in this Agreement, the DMVA makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the DMVA shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the DMVA's relevant financial interests.

10. OWNERSHIP OF DOCUMENTS. All documents, data, studies, drawings, maps, models, photographs and reports prepared by DMVA under this Agreement shall be considered the property of City. DMVA shall be permitted to reference and use said materials for use in future studies, work, and marketing so long as said materials are considered "public documents" and are not subject to attorney-client privilege, or the subject of pending closed or executive session discussions.

11. INSURANCE

11.1 DMVA shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the DMVA, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" and are admitted to do business in the State of California, unless otherwise approved in writing by the City's Risk Manager.

11.2 DMVA's liabilities, including but not limited to DMVA's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement.

11.3 Types and Amounts Required. DMVA shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

11.3.1 Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1,000,000** per occurrence and subject to an annual aggregate of **\$2,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

11.3.2 Commercial Automobile Liability. For all of the DMVA's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of **\$300,000** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

11.3.3 Workers' Compensation. For all of the DMVA's employees who are subject to this Agreement and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum **\$1,000,000** employers' liability coverage. The DMVA shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

11.3.4 Consulting Liability. Consulting liability (errors and omissions) coverage with a limit of **\$1,000,000** per claim and **\$2,000,000** annual aggregate. The DMVA shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this Agreement whichever occurs last. The DMVA agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

11.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions are the responsibility of the DMVA and must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers, or (2) the DMVA shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.5 Additional Required Provisions. The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

11.5.1 The City, its officers, officials, employees, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the City.

11.5.2 The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

11.6 Verification of Coverage. DMVA shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Section 11. The endorsement should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

12. DEFENSE AND INDEMNIFICATION.

12.1 DMVA agrees to indemnify, defend (with attorneys approved by City), and hold harmless the City, and its officers, officials, agents and employees (the "Indemnified Parties") from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the DMVA, its employees, agents, and subcontractors performance of services under this Agreement. DMVA's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the City or its elected officials, officers, agents, and employees. DMVA's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The Parties expressly agree that any payment, attorney's fees, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

12.2 This indemnity is in addition to any other rights or remedies which City may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, at its sole discretion, reserve, retain or apply any monies due to DMVA under this Agreement for the purpose of resolving such claims; provided however, that City may release such funds if DMVA provides City with reasonable assurances of protection of the City's interest. The City shall, in its sole discretion determine whether such assurances are reasonable.

12.3 DMVA agrees that its duty to defend arises upon an allegation of liability based upon the performance of services under this Agreement by DMVA, its officers, agents, representatives, employees, sub-DMVAs, or anyone for whom DMVA is liable and that an adjudication of DMVA's liability is not a condition precedent to DMVA's duty to defend.

13. SUBCONTRACTORS.

13.1 The DMVA's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the Project is subject to prior approval by the City.

13.2 All contracts entered into between the DMVA and its subcontractor shall also provide that each subcontractor shall obtain insurance policies, which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. The DMVA shall require the subcontractor to obtain all policies described in section 11 of this Agreement in the amounts required by the City, which shall not be greater than the amounts required of the DMVA.

13.3 In any dispute between the DMVA and its subconsultants, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The DMVA agrees to defend and indemnify the City as described in section 12 of this Agreement should the City be made a party to any judicial or administrative proceeding to resolve any such dispute or should the City incur any costs in responding to third-party discovery requests.

14. NON-DISCRIMINATION. DMVA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, military or veteran status, gender, gender identity, gender expression, sexual orientation, or any other class

protected under state, federal, or local law. DMVA shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to any class or category protected under state, federal, or local law and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. DMVA agrees to post in conspicuous places available to employees and applicants for employment any notices provided by City setting forth the provisions of this non-discrimination clause.

15. NOTICES. All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

City of Del Mar
City Clerk
1050 Camino del Mar
Del Mar, CA 92014

DMVA
Jen Grove, CEO
1442 Camino Del Mar, Suite 217
Del Mar, CA 92014

16 ASSIGNABILITY. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the DMVA's duties be delegated or sub-contracted, without the express written consent of the City.

17. RESPONSIBILITY FOR EQUIPMENT. City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by DMVA or any of DMVA's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to DMVA by City. The acceptance or use of any such equipment by DMVA, DMVA's employees, or subcontractors shall be construed to mean that DMVA accepts full responsibility for and agrees to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

18. CALIFORNIA LAW; VENUE/MISC. This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. DMVA hereby waives any and all rights it might have pursuant to California Code of Civil Procedure section 394.

19. COMPLIANCE WITH LAWS. The DMVA shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720, et seq., relating to payment of prevailing wages for public works projects, if applicable. DMVA shall indemnify and defend the Indemnified Parties from and against any liability incurred due to any failure on the part of DMVA to comply with any applicable Laws.

To the extent DMVA is required to comply with prevailing wage requirements, DMVA does hereby acknowledge that they are aware of, have read, and understand the terms and

implications of SB 854 and DMVA and any subconsultants ensure that they are familiar with and comply with its requirements. Such requirements include, but are not limited to, the registration requirement with the Department of Industrial Relations, State of California (DIR), pursuant to Labor Code section 1725.5. As of March 1, 2015, in compliance with SB 854, the City requires all affected contractors and DMVAs to be registered with the DIR prior to submitting a bid or proposal on any eligible District project. As of April 1, 2015, failure to comply with the requirements of SB 854 by any contractor or DMVA, including registration with the DIR pursuant to Labor Code section 1725.5, shall be a material breach of this Agreement which may be terminated by the City in its sole and absolute discretion. Where applicable, this project is subject to compliance monitoring and enforcement by the DIR.

20. DMVA'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986. DMVA certifies that DMVA is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors, and DMVAs that are included in this Agreement.

21. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein.

22. AMENDMENTS. This Agreement may be modified or amended only by a written document executed by both DMVA and City and approved as to form by the City Attorney. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless agreed to in writing by both Parties.

23. NO WAIVER. No failure of either the City or the DMVA to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

24. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

25. DRAFTING AMBIGUITIES. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26. LEGAL FEES. In the event of the bringing of any action or suit by either party hereto against the other party hereunder to enforce or interpret any of the provisions, covenants or conditions of this Agreement, or arising out of any tortious conduct by either party incident to this Agreement, the prevailing party in such action or suit shall be entitled to recover all costs and expenses of suit, including reasonable attorneys' fees. In any action or suit brought to enforce this Agreement, the damages available shall be limited to specific performance or other such equitable relief that the court may order.

27. CONFLICTS BETWEEN TERMS. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

28. EXHIBITS INCORPORATED. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

29. SIGNING AUTHORITY. The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF DEL MAR,
a municipal corporation

DEL MAR VILLAGE ASSOCIATION

By: _____
Ashley Jones, City Manager

By: _____
Jen Grove, CEO

ATTEST:

Nestor Machado, Acting City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney

EXHIBIT "A"

Del Mar Village Association Destination Marketing Program Scope of Services July 1, 2023, through June 30, 2026

DMVA will plan, oversee, and coordinate all marketing efforts promoting Del Mar Village as a destination through advertising, website, social media, special events, media promotions, and community and visitor relations to support a strong return for both Transient Occupancy Tax (TOT) and sales tax for the City of Del Mar. All scope of work items below will depend on the funding received by DMVA from the City of Del Mar TOT allocation each month.

Digital and Print Marketing

1. Website – Oversee the hosting, maintenance, update, and oversight of www.VisitDelMarVillage.com, including regularly updated relevant content and items of interest to the local community and visitors, such as events and special offers from local businesses.
2. Search Strategies – Maximize the organic online audience reach and engagement through increased search engine optimization to capture organic search with relevant content, highlighting local Del Mar businesses (with emphasis on hotel referrals), area attractions, and events.
3. Social Media – Develop social media campaigns on Facebook, Instagram, and TikTok; develop advertising promotions to increase visibility for Del Mar as a destination; gather content and create monthly editorial calendars to encourage engagement, engage influencers, etc.
4. Email Marketing – Oversee the creation and management of email marketing campaigns and an email subscriber list to drive engagement and exposure for Del Mar.
5. Digital Assets – Develop and promote Del Mar with new or updated digital graphic art, destination photography, and/or video assets.
6. Print Marketing – Evaluate opportunities for local print marketing to promote events and business commerce downtown.
7. Media Relations – Coordinate inbound media visits for editorial and other features. Evaluate other options for media relations, including press releases and media invites to DMVA special events and business mixers.
8. Influencer Relations – Partner with social media influencers to promote Del Mar Village special events.

Special Event Promotion

1. Downtown Signature Events – Manage, plan, promote, and produce Del Mar Village's signature annual special events to promote Del Mar as a destination. This includes but is not limited to Summer Solstice, Winter Taste & Sip/North Pole by the Sea, Breast Cancer Cheering Station, and other downtown events.
2. Cross Promotions – Partner with national, regional, and local event organizers on planning, marketing, and cross-promoting special events such as the 22nd Agriculture Association Fairgrounds events, Del Mar Racetrack events, Breeders' Cup, etc.

Design and Destination Guidance

1. Holiday Tree – Manage installation and storage of the annual 35-foot holiday tree and decor at the Jim Watkins Amphitheater, including evaluating options for renting or purchasing a new holiday tree.
2. Holiday Banners/Decor – Manage installation, storage, and maintenance of the holiday light pole banners, garlands, and lights, including evaluating and facilitating any refurbishments necessary.
3. Light Pole Banners – Manage installation, storage, and maintenance of the iconic Del Mar location and “Welcome Summer” light pole banners and American flags.
4. Other Banners/Decor – Evaluate other options for additional light pole banners/decors or other downtown decors as needed.
5. Wayfinding Signage
 - a. Pedestrian and Lifeguard Wayfinding Signage – Manage the annual design update, printing, installation, and maintenance of the downtown, park, and beach pedestrian and lifeguard wayfinding signage. Distribute printouts of the Del Mar map directory and/or a QR code to the interactive online map (see below) to village hotels to use in helping guests navigate and experience the downtown.
 - b. Del Mar Village Interactive Online Map – Maintain and update the interactive map on www.visitdelmarvillage.com to help visitors easily navigate to downtown businesses and points of interest.
 - c. Fairgrounds Signage – Manage the annual design update, printing, installation, and maintenance of the Fairgrounds sign holders, encouraging visitors to shop, dine, and play in Del Mar Village.
 - d. Other Wayfinding Signage – Evaluate other options for wayfinding signage in Del Mar Village.

Reporting and Research

1. City Reporting – DMVA to provide a written annual report to the City by October 15 of each year of the Agreement outlining what has been done by DMVA to implement this Scope of Services during the prior fiscal year (July1 - June 30).

2. Industry Research – Continually review and utilize existing industry and local research (e.g., San Diego County; San Diego Tourism Authority; Visit California; and local, regional, and national hospitality, retail, and restaurant industry and other economic research and data, etc.) to ensure that all Del Mar destination marketing plans and strategies are effective and producing quantifiable and competitive results.

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DEL MAR AND THE DEL MAR VILLAGE ASSOCIATION
FOR ECONOMIC DEVELOPMENT & BUSINESS SUPPORT SERVICES**

This Professional Services Agreement is made and entered into this 1st day of July 2023, by and between the City of Del Mar, a Charter City and a municipal corporation (“City”), and the Del Mar Village Association (“DMVA”) (collectively “Parties”).

WHEREAS, the City desires to enter into an agreement with DMVA to provide programs designed to provide support and facilitate economic growth and development of the Del Mar business community (“Services”). Said work is to be performed in accordance with the terms and conditions set forth below and as described in the Scope of Services, attached hereto as Exhibit “A” and incorporated herein; and

WHEREAS, the City has initially determined that DMVA is qualified by experience and ability to perform the services desired by City, and DMVA is willing to perform such services; and

WHEREAS, DMVA will conduct all the work as described and detailed in this Agreement to be provided to the City.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

1. SERVICES.

1.1 Scope of Services. DMVA shall perform the Services as set forth in the written Scope of Services, attached hereto as **Exhibit “A”** and incorporated herein. Such services shall be provided at the direction of the City.

1.2. City Modification of Scope of Services. City may order changes to the Scope of Services within the general scope of this Agreement consisting of additions, deletions, or other revisions. If such changes cause a change in the DMVA’s cost of, or time required for, completion of the Scope of Services, an equitable adjustment to DMVA’s compensation and/or contract time shall be made, subject to the City’s approval. All such changes shall be authorized in writing, executed by DMVA and City. If such a change results in an extension of the term of this Agreement or increases the maximum amount to be paid under this Agreement, no such change shall have any force or effect unless an amendment to this Agreement is approved by the City Council.

2. DURATION OF AGREEMENT.

2.1 Term, Time for Performance. This Agreement shall be effective for an initial period of three (3) years beginning July 1, 2023, through June 30, 2026. Upon satisfactory performance and written agreement of both parties, the Agreement may be extended for an additional two (2) year period.

Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

2.2 Delay. Any delay resulting from causes beyond the control of DMVA may merit an extension of time for the completion of the Scope of Services. When such delay occurs, DMVA shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the Consulting Services when justified by the circumstances provided that no extension of time shall be granted which would extend the time for performance beyond the date specified in section 2.1 above.

2.3 City's Right to Terminate for Default. Should DMVA be in default of any covenant or condition hereof, City may immediately terminate this Agreement for cause if DMVA fails to cure the default within ten (10) calendar days of receiving written notice of the default.

2.4 City's Right to Terminate without Cause. Without limiting its rights in the event of DMVA's default, City may terminate this Agreement, without cause, by giving written notice to DMVA. Such termination shall be effective upon receipt of the written notice. DMVA shall be compensated for all effort and material expended on behalf of City under the terms of this Agreement, up to the effective date of termination. All personal property remaining in City facilities or on City property thirty (30) days after the expiration or termination of this Agreement shall be, at City's election, considered the property of City.

3. PERFORMANCE AFTER TERMINATION. Upon termination of this Agreement as provided herein, DMVA shall, within such reasonable time period as may be directed by City Manager, complete those items of work which are in various stages of completion and which City Manager determines are necessary to be completed by DMVA to allow the project to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by DMVA shall be delivered to the City Manager, upon her request, as property of City.

4. COMPENSATION.

4.1 Total Amount. Compensation to DMVA shall be \$50,000 per year to perform the Scope of Services contained in Exhibit "A", and to be paid as a lump sum at the beginning of each fiscal year upon execution of the Agreement.

4.2 Additional Services. City may, as the need arises or in the event of an emergency, request additional services of DMVA. Should such additional services be required, Compensation therefore shall be paid to the DMVA in accordance with Scope of Services contained in Exhibit "A." City and DMVA shall agree to the costs prior to commencement of such work.

5. INDEPENDENT CONTRACTOR. DMVA is, for all purposes arising out of this Agreement, an independent contractor. The DMVA has and shall retain the right to exercise full control and supervision of all persons assisting the DMVA in the performance of said services hereunder, the City only being concerned with the finished results of the work being performed. Neither DMVA nor DMVA's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, DMVA being solely responsible for all such matters, as well as, compliance with social security and income tax withholding and all other regulations and laws governing such matters.

6. STATEMENT OF EXPERIENCE. DMVA agrees and represents by executing this Agreement that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent DMVA using the degree of care and skill ordinarily exercised by reputable DMVA's practicing in the same field of service in the State of California. Additionally, DMVA and all of DMVA's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

7. AUDIT OF RECORDS.

7.1 At any time during normal business hours and as often as may be deemed necessary, the DMVA shall make available to a representative of City for examination all of its records with respect to all matters covered by this Agreement and shall permit City to audit, examine, and/or reproduce such records. DMVA shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2 The DMVA shall include the City's right to audit under this section in any and all of their subcontracts and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY. All services performed by DMVA, including, but not limited to, all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by DMVA, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to DMVA, at the time that it was disclosed to DMVA by the City, (b) subsequently becomes publicly known through no act or omission of DMVA or (c) otherwise becomes known to DMVA other than through disclosure by the City. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the City. The sole purpose of this section is to prevent disclosure of City's confidential and proprietary information by DMVA or subcontractors.

9. CONFLICTS OF INTEREST.

9.1 DMVA shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. DMVA shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the DMVA has a financial interest as defined in Government Code § 87103. DMVA represents that it has no knowledge of any financial interests, which would require it to disqualify itself from any matter on which it might perform services for the City.

9.2 DMVA shall comply with all of the reporting requirements of the Political Reform Act. The DMVA shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the City's determination that the DMVA is subject to a conflict of interest code, if applicable. The DMVA shall also file a Form 700 (Annual Statement)

on or before April 1, disclosing any financial interests held during the previous calendar year for which the DMVA was subject to a conflict of interest code.

9.3 If, in performing the Consulting Services set forth in this Agreement, the DMVA makes, or participates in, a “governmental decision” as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the DMVA shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the DMVA’s relevant financial interests.

10. OWNERSHIP OF DOCUMENTS. All documents, data, studies, drawings, maps, models, photographs and reports prepared by DMVA under this Agreement shall be considered the property of City. DMVA shall be permitted to reference and use said materials for use in future studies, work, and marketing so long as said materials are considered “public documents” and are not subject to attorney-client privilege, or the subject of pending closed or executive session discussions.

11. INSURANCE

11.1 DMVA shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the DMVA, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best’s rating of no less than “A” and “VII” and are admitted to do business in the State of California, unless otherwise approved in writing by the City’s Risk Manager.

11.2 DMVA’s liabilities, including but not limited to DMVA’s indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement.

11.3 Types and Amounts Required. DMVA shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

11.3.1 Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1,000,000** per occurrence and subject to an annual aggregate of **\$2,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

11.3.2 Commercial Automobile Liability. For all of the DMVA's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of

\$300,000 per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

11.3.3 Workers' Compensation. For all of the DMVA's employees who are subject to this Agreement and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum **\$1,000,000** employers' liability coverage. The DMVA shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

11.3.4 Consulting Liability. Consulting liability (errors and omissions) coverage with a limit of **\$1,000,000** per claim and **\$2,000,000** annual aggregate. The DMVA shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this Agreement whichever occurs last. The DMVA agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

11.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions are the responsibility of the DMVA and must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers, or (2) the DMVA shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.5 Additional Required Provisions. The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

11.5.1 The City, its officers, officials, employees, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the City.

11.5.2 The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

11.6 Verification of Coverage. DMVA shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Section 11. The endorsement should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

12. DEFENSE AND INDEMNIFICATION.

12.1 DMVA agrees to indemnify, defend (with attorneys approved by City), and hold harmless the City, and its officers, officials, agents and employees (the "Indemnified Parties") from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the DMVA, its employees, agents, and subcontractors performance of services under this Agreement. DMVA's duty to indemnify under this section shall not include liability for damages for death or

bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the City or its elected officials, officers, agents, and employees. DMVA's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The Parties expressly agree that any payment, attorney's fees, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

12.2 This indemnity is in addition to any other rights or remedies which City may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, at its sole discretion, reserve, retain or apply any monies due to DMVA under this Agreement for the purpose of resolving such claims; provided however, that City may release such funds if DMVA provides City with reasonable assurances of protection of the City's interest. The City shall, in its sole discretion determine whether such assurances are reasonable.

12.3 DMVA agrees that its duty to defend arises upon an allegation of liability based upon the performance of services under this Agreement by DMVA, its officers, agents, representatives, employees, sub-DMVAs, or anyone for whom DMVA is liable and that an adjudication of DMVA's liability is not a condition precedent to DMVA's duty to defend.

13. SUBCONTRACTORS.

13.1 The DMVA's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the Project is subject to prior approval by the City.

13.2 All contracts entered into between the DMVA and its subcontractor shall also provide that each subcontractor shall obtain insurance policies, which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. The DMVA shall require the subcontractor to obtain all policies described in section 11 of this Agreement in the amounts required by the City, which shall not be greater than the amounts required of the DMVA.

13.3 In any dispute between the DMVA and its subconsultants, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The DMVA agrees to defend and indemnify the City as described in section 12 of this Agreement should the City be made a party to any judicial or administrative proceeding to resolve any such dispute or should the City incur any costs in responding to third-party discovery requests.

14. NON-DISCRIMINATION. DMVA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, military or veteran status, gender, gender identity, gender expression, sexual orientation, or any other class protected under state, federal, or local law. DMVA shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to any class or category protected under state, federal, or local law and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. DMVA agrees to post in conspicuous places available to

employees and applicants for employment any notices provided by City setting forth the provisions of this non-discrimination clause.

15. NOTICES. All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

City of Del Mar
City Clerk
1050 Camino Del Mar
Del Mar, CA 92014

Del Mar Village Association
Jen Grove, CEO
1442 Camino Del Mar, Suite 217
Del Mar, CA 92014

16 ASSIGNABILITY. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the DMVA's duties be delegated or sub-contracted, without the express written consent of the City.

17. RESPONSIBILITY FOR EQUIPMENT. City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by DMVA or any of DMVA's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to DMVA by City. The acceptance or use of any such equipment by DMVA, DMVA's employees, or subcontractors shall be construed to mean that DMVA accepts full responsibility for and agrees to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

18. CALIFORNIA LAW; VENUE/MISC. This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. DMVA hereby waives any and all rights it might have pursuant to California Code of Civil Procedure section 394.

19. COMPLIANCE WITH LAWS. The DMVA shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720, et seq., relating to payment of prevailing wages for public works projects, if applicable. DMVA shall indemnify and defend the Indemnified Parties from and against any liability incurred due to any failure on the part of DMVA to comply with any applicable Laws.

To the extent DMVA is required to comply with prevailing wage requirements, DMVA does hereby acknowledge that they are aware of, have read, and understand the terms and implications of SB 854 and DMVA and any subconsultants ensure that they are familiar with and comply with its requirements. Such requirements include, but are not limited to, the registration requirement with the Department of Industrial Relations, State of California (DIR), pursuant to Labor Code section 1725.5. As of March 1, 2015, in compliance with SB 854, the City requires all affected contractors and DMVAs to be registered with the DIR prior to submitting a bid or proposal on any eligible District project. As of April 1, 2015, failure to comply with the requirements of SB 854 by any contractor or DMVA, including registration with the DIR pursuant to Labor Code section 1725.5, shall be a material breach of this Agreement which may be

terminated by the City in its sole and absolute discretion. Where applicable, this project is subject to compliance monitoring and enforcement by the DIR.

20. DMVA'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986. DMVA certifies that DMVA is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors, and DMVAs that are included in this Agreement.

21. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein.

22. AMENDMENTS. This Agreement may be modified or amended only by a written document executed by both DMVA and City and approved as to form by the City Attorney. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless agreed to in writing by both Parties.

23. NO WAIVER. No failure of either the City or the DMVA to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

24. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

25. DRAFTING AMBIGUITIES. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26. LEGAL FEES. In the event of the bringing of any action or suit by either party hereto against the other party hereunder to enforce or interpret any of the provisions, covenants or conditions of this Agreement, or arising out of any tortious conduct by either party incident to this Agreement, the prevailing party in such action or suit shall be entitled to recover all costs and expenses of suit, including reasonable attorneys' fees. In any action or suit brought to enforce this Agreement, the damages available shall be limited to specific performance or other such equitable relief that the court may order.

27. CONFLICTS BETWEEN TERMS. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each

Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

28. EXHIBITS INCORPORATED. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

29. SIGNING AUTHORITY. The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF DEL MAR,
a municipal corporation

DEL MAR VILLAGE ASSOCIATION

By: _____
Ashley Jones, City Manager

By: _____
Jen Grove, CEO

ATTEST:

Nestor Machado, Acting City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney

EXHIBIT "A"

Del Mar Village Association Scope of Economic Development & Business Support Services July 1, 2023, through June 30, 2026

The Del Mar Village Association (DMVA) will perform economic development and provide business support services to participating brick-and-mortar businesses with a valid City business permit located in the commercial areas of the City of Del Mar (Del Mar Businesses) on an annual fiscal year basis as further described below:

Serve as a Resource to Existing Del Mar Businesses

1. Small Business City Liaison to City – Act as City of Del Mar liaison for Del Mar businesses by continuing to meet with and gather input from business owners/operators about what the City can do to support economic vitality in the downtown. Communicate requests and suggestions to the City for consideration and implementation while encouraging an open line of communication between business owners, commercial property owners, DMVA, and the City by soliciting feedback on programming and resources. Work with the City Manager, City staff, and DMVA's City Council liaisons on downtown issues, concerns, and improvements.
2. Business Assistance and Retention – Provide ongoing assistance to Del Mar businesses and commercial property owners on issues related to the downtown, including business expansions, relocations, improvements, promotions, City issues and challenges facing the business community, and other current downtown issues.
3. Information and Communication – Disseminate weekly DMVA business updates regarding City issues and programs and other relevant information to Del Mar businesses through email communications, the DMVA business partner Facebook group, social posts, virtual and in-person meetings, and web resources.
4. Business Partner Resource Center – Maintain and regularly update the Business Partner Resource Center on the DMVA website with marketing tools, small business government resources, and other relevant information. Work with the City of Del Mar staff to add new and updated government regulatory information and other City business information to the Business Partner Resource Center with links to the City website.
5. Business-to-Business Promotion & Networking – Communicate Del Mar business promotions and connect local businesses through email communications and the business partner Facebook group, plus in-person opportunities, including business mixers, meet-and-greet events, and/or individual meetings.
6. Business Support Regulations – Continue to research and outreach to Del Mar businesses and work with the City on long- and short-term regulatory options to support these businesses with economic recovery and vitality.

Support New Del Mar Business Development and Improvements in Del Mar Village

1. Downtown Developments & Business Opportunities – Support new downtown developments and new business opportunities to encourage new and expanded downtown development, such as:
 - a. Help to identify commercial vacancies in downtown Del Mar and assist property owners with filling the vacancies.
 - b. Act as a liaison between potential and in-progress developments and the City of Del Mar.
 - c. Encourage reinvestment and expansions of existing businesses and relocation to Del Mar of new businesses.
2. New Business Resource Page – Update the www.visitdelmarvillage.com/startabusiness page, geared toward prospective businesses considering relocating to Del Mar Village, with steps to start a new business. DMVA to direct inbound new business inquiries to appropriate City of Del Mar departments.

Continue Existing and Implement New Programs to Drive Commerce in Downtown Del Mar Village and Support Fundraising Initiatives for the Downtown

1. DMVA Business Partnerships – Outreach to current DMVA business partners for annual partnership opportunities. Identify and develop new partnerships with businesses. When possible/desired by businesses, coordinate ribbon cuttings and “Welcome to Del Mar” ceremonies for business openings, expansions, changes in ownership, etc. Include business promotions in customer and business-to-business e-blasts and other promotions. Assist with downtown questions and connect businesses to the residential community and visitors.
2. Del Mar Village Dollars/Yiftee eGift Card – Continue coordinating the Del Mar Village Dollars community card program. As funding allows, implement promotions at key points in the year – including for holiday shopping – onboard new participating businesses, solicit corporate partnerships and grant funding, and promote the program to businesses and residents year-round.
3. Holiday Parking – Support the City holiday parking initiative by coordinating with the City of Del Mar Public Works for meter bagging and promoting free parking in holiday communications (customer and business e-blasts, social media, print ads, etc.).

Partner with City on Downtown Improvements and Programming

1. Streetscape Furnishings Improvement
 - a. Work with the Rotary Club of Del Mar on continuing to refurbish downtown streetscape furniture.
 - b. Assist the City in developing a formal downtown Bench Donation Program, including an agreement, fees, procedures, and outreach to existing and new bench donors.
2. Other Downtown Improvements – Organize and coordinate with the City on additional Rotary Club of Del Mar downtown beautification projects.

3. Sustainability

- a. Assist the City in implementing and communicating to the Del Mar businesses environmental sustainability efforts, programs, and regulations to ensure business compliance with local, state, and federal laws and City goals.
- b. Plan and produce quarterly community cleanups to engage residents and downtown businesses in picking up trash from the streets, alleys, gutters, sidewalks, and beach areas.
- c. Research and gather costs for other downtown sustainability opportunities, such as water refill stations and/or a beach bucket litter abatement program, etc. If financially and logistically feasible, implement such programs.

4. Downtown Sidewalk/Street Furnishings Power Wash/Litter Abatement Program

- a. Oversee, coordinate, and implement a quarterly program for power washing of Camino Del Mar and 15th Street downtown sidewalks, street furnishings, and a downtown litter abatement program using the San Diego Urban Corps.
- b. Provide notice of the program to Del Mar businesses.
- c. Provide before and after pictures to the City and Del Mar businesses.

Communication and Reporting to City

1. Meetings – DMVA to participate in monthly meetings with the City Manager, City Planning Director, and other City staff to ensure communication of Del Mar business issues and/or concerns.
2. City Council Liaisons – DMVA to work with the City Council liaisons, in conjunction with the City Manager, on downtown issues on an ongoing basis.
3. Reporting – DMVA to provide a written annual report outlining what has been done by DMVA to implement this Scope of Services and planned efforts through the end of the fiscal year (June 30) by August 1 of each year of the Agreement.



City of Del Mar Staff Report

TO: Honorable Mayor and City Council Members

FROM: Emily Torres, Management Analyst
Clem Brown, Assistant City Manager
Via Ashley Jones, City Manager

DATE: June 5, 2023

SUBJECT: Agreement with Del Mar Community Connections for Senior Support Services

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council: 1) Approve an Agreement with Del Mar Community Connections (DMCC) for senior support services (Attachment A) for an initial three-year term from July 1, 2023, through June 30, 2026; and 2) Authorize the City Manager to execute the Agreement.

DISCUSSION/ANALYSIS:

For many years, DMCC has provided critical services and addressed unmet community needs for Del Mar's senior community with financial assistance from the City's Community Support Grant Program. However, staff is now recommending that the partnership be formalized through a professional services agreement for services that are important to the Del Mar community but the City does not have the resources or capacity to directly provide. Staff made the determination that DMCC's services under the Agreement are exempt from the City's standard bid requirement because the high quality and ease of access to local services cannot be reasonably obtained from another source (Del Mar Municipal Code 7.04.090).

If approved, the City's compensation to DMCC would continue to be \$60,000 per fiscal year, for a total of \$180,000 for the initial three-year term with the option to extend the contract by two (2) years. Attachment A includes the proposed Agreement and a detailed scope of work. Staff worked closely with DMCC to develop the scope of work to ensure the services for the three-year Agreement are aligned with the City's goals and priorities and will provide sustained benefits to the Del Mar community.

City Council Action:

Del Mar Community Connections (DMCC)

DMCC is a volunteer-driven organization providing programs and services to senior citizens, including primarily Del Mar residents, enabling them to live independently in their homes. Historically, DMCC has partnered with the City in providing senior services, healthy aging and educational programs, community events, and activities, as well as transportation services to assist seniors with grocery shopping and medical appointments.

Services provided by DMCC include the following, which are included in Exhibit A of the attached Agreement:

- Van services for groceries and shopping, including a wheelchair accessible van for errands, and transportation to COVID-19 vaccination appointments;
- DMCC explorers' series for hiking, museums, and cultural outings;
- Aging and educational programs that includes talks on longevity, medical research, scam prevention, and estate planning;
- Computer and internet training programs;
- Annual flu shot clinics;
- Medical equipment available for loan;
- Lunch programs for a variety of participants, including those who are primarily home bound; and
- Community parties and celebrations, including weekly group clubs

FISCAL IMPACT:

There is no action to be taken by the City Council related to this agenda item. Sufficient budget for the Agreement is included in the proposed budget for Fiscal Year (FY) 2023-2024 and FY 2024-2025.

ENVIRONMENTAL REVIEW:

The proposed City Council action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

This is an operational item not included on the Council list of Goals/Priorities.

ATTACHMENTS:

Attachment A – Agreement with Del Mar Community Connections

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DEL MAR AND THE DEL MAR COMMUNITY CONNECTIONS
FOR SENIOR SUPPORT SERVICES**

This Agreement is made and entered into this 1st day of July, 2023, by and between the City of Del Mar, a Charter City and a municipal corporation (“City”), and Del Mar Community Connections (“DMCC”), a California Public Benefit Corporation (collectively “Parties”).

WHEREAS, the City desires to enter into an agreement with DMCC to provide programs designed to support Del Mar seniors that would otherwise not be available (“Services”). Said work is to be performed in accordance with the terms and conditions set forth below and as described in the scope of services, attached hereto as Exhibit “A” and incorporated herein; and

WHEREAS, the City has initially determined that DMCC is qualified by experience and ability to perform the services desired by City, and DMCC is willing to perform such services; and

WHEREAS, DMCC will conduct all the work as described and detailed in this Agreement to be provided to the City.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

1. SERVICES.

1.1 Scope of Services. DMCC shall perform the Services as set forth in the written Scope of Services, attached hereto as **Exhibit “A”** and incorporated herein. Such services shall be provided at the direction of the City.

1.2. City Modification of Scope of Services. City may order changes to the Scope of Services within the general scope of this Agreement consisting of additions, deletions, or other revisions. If such changes cause a change in the DMCC’s cost of, or time required for, completion of the Scope of Services, an equitable adjustment to DMCC’s compensation and/or contract time shall be made, subject to the City’s approval. All such changes shall be authorized in writing, executed by DMCC and City. If such a change results in an extension of the term of this Agreement or increases the maximum amount to be paid under this Agreement, no such change shall have any force or effect unless an amendment to this Agreement is approved by the City Council.

2. DURATION OF AGREEMENT.

2.1 Term, Time for Performance. This Agreement shall be effective for an initial period of three (3) years beginning July 1, 2023, through June 30, 2026. Upon satisfactory performance and written agreement of both parties, the Agreement may be extended for an additional two (2) year period.

Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

2.2 Delay. Any delay resulting from causes beyond the control of DMCC may merit an extension of time for the completion of the Scope of Services. When such delay occurs, DMCC shall immediately notify the Project Coordinator, as designated by the City, in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the Services provided by DMCC when justified by the circumstances provided that no extension of time shall be granted which would extend the time for performance beyond the date specified in section 2.1 above.

2.3 City's Right to Terminate for Default. Should DMCC be in default of any covenant or condition hereof, City may immediately terminate this Agreement for cause if DMCC fails to cure the default within ten (10) calendar days of receiving written notice of the default.

2.4 City's Right to Terminate without Cause. Without limiting its rights in the event of DMCC's default, City may terminate this Agreement, without cause, by giving written notice to DMCC consistent with direction provided by the City Council in a public meeting. Such termination shall be effective upon receipt of the written notice. DMCC shall be compensated for all effort and material expended on behalf of City under the terms of this Agreement, up to the effective date of termination. All personal property remaining in City facilities or on City property thirty (30) days after the expiration or termination of this Agreement shall be, at City's election, considered the property of City.

3. PERFORMANCE AFTER TERMINATION. Upon termination of this Agreement as provided herein, DMCC shall, within such reasonable time period as may be directed by City Manager, complete those items of work which are in various stages of completion and which City Manager determines are necessary to be completed by DMCC to allow the project to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by DMCC shall be delivered to the City Manager, upon her request, as property of City.

4. COMPENSATION.

4.1 Total Amount. Compensation to DMCC shall be \$60,000 per year to perform the Scope of Services contained in Exhibit "A", and to be paid as a lump sum at the beginning of each fiscal year upon execution of the Agreement.

4.2 Additional Services. City may, as the need arises or in the event of an emergency, request additional services of DMCC. Should such additional services be required, Compensation therefore shall be paid to the DMCC in accordance with Scope of Services contained in Exhibit "A." City and DMCC shall agree to the costs prior to commencement of such work.

5. INDEPENDENT CONTRACTOR. DMCC is, for all purposes arising out of this Agreement, an independent contractor. The DMCC has and shall retain the right to exercise full control and supervision of all persons assisting the DMCC in the performance of said services hereunder, the City only being concerned with the finished results of the work being performed. Neither DMCC nor DMCC's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, DMCC being solely responsible

for all such matters, as well as, compliance with social security and income tax withholding and all other regulations and laws governing such matters.

6. STATEMENT OF EXPERIENCE. DMCC agrees and represents by executing this Agreement that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent service provider using the degree of care and skill ordinarily exercised by reputable service providers practicing in the same field of service in the State of California. Additionally, DMCC and all of DMCC's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

7. AUDIT OF RECORDS.

7.1 At any time during normal business hours and as often as may be deemed necessary, the DMCC shall make available to a representative of City for examination all of its records with respect to all matters covered by this Agreement and shall permit City to audit, examine, and/or reproduce such records. DMCC shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2 The DMCC shall include the City's right to audit under this section in any and all of their subcontracts and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY. All services performed by DMCC, including, but not limited to, all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by DMCC, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to DMCC, at the time that it was disclosed to DMCC by the City, (b) subsequently becomes publicly known through no act or omission of DMCC or (c) otherwise becomes known to DMCC other than through disclosure by the City. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the City. The sole purpose of this section is to prevent disclosure of City's confidential and proprietary information by DMCC or subcontractors.

9. CONFLICTS OF INTEREST.

9.1 DMCC shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. DMCC shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the DMCC has a financial interest as defined in Government Code § 87103. DMCC represents that it has no knowledge of any financial interests, which would require it to disqualify itself from any matter on which it might perform services for the City.

9.2 DMCC shall comply with all of the reporting requirements of the Political Reform Act. The DMCC shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the City's determination that the DMCC is subject to a conflict of interest code, if applicable. The DMCC shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the DMCC was subject to a conflict of interest code.

9.3 If, in performing the Consulting Services set forth in this Agreement, the DMCC makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the DMCC shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the DMCC's relevant financial interests.

10. OWNERSHIP OF DOCUMENTS. All documents, data, studies, drawings, maps, models, photographs and reports prepared by DMCC under this Agreement shall be considered the property of City. DMCC shall be permitted to reference and use said materials for use in future studies, work, and marketing so long as said materials are considered "public documents" and are not subject to attorney-client privilege, or the subject of pending closed or executive session discussions.

11. INSURANCE

11.1 DMCC shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the DMCC, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" and are admitted to do business in the State of California, unless otherwise approved in writing by the City's Risk Manager.

11.2 DMCC's liabilities, including but not limited to DMCC's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement.

11.3 Types and Amounts Required. DMCC shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

11.3.1 Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1,000,000** per occurrence and subject to an annual aggregate of **\$2,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

11.3.2 Commercial Automobile Liability. For all of the DMCC's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of **\$300,000** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

11.3.3 Workers' Compensation. For all of the DMCC's employees who are subject to this Agreement and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum **\$1,000,000** employers' liability coverage. The DMCC shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

11.3.4 Consulting Liability. Consulting liability (errors and omissions) coverage with a limit of **\$1,000,000** per claim and **\$2,000,000** annual aggregate. The DMCC shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this Agreement whichever occurs last. The DMCC agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

11.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions are the responsibility of the DMCC and must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers, or (2) the DMCC shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.5 Additional Required Provisions. The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

11.5.1 The City, its officers, officials, employees, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the City.

11.5.2 The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

11.6 Verification of Coverage. DMCC shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Section 11. The endorsement should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

12. DEFENSE AND INDEMNIFICATION.

12.1 DMCC agrees to indemnify, defend (with attorneys approved by City), and hold harmless the City, and its officers, officials, agents and employees (the "Indemnified Parties") from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the DMCC, its employees', agents', and subcontractors' performance of services under this Agreement. DMCC's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the City or its elected officials, officers, agents, and employees. DMCC's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The Parties expressly agree that any payment, attorney's fees, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

12.2 This indemnity is in addition to any other rights or remedies which City may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, at its sole discretion, reserve, retain or apply any monies due to DMCC under this Agreement for the purpose of resolving such claims; provided however, that City may release such funds if DMCC provides City with reasonable assurances of protection of the City's interest. The City shall, in its sole discretion determine whether such assurances are reasonable.

12.3 DMCC agrees that its duty to defend arises upon an allegation of liability based upon the performance of services under this Agreement by DMCC, its officers, agents, representatives, employees, sub-DMCCs, or anyone for whom DMCC is liable and that an adjudication of DMCC's liability is not a condition precedent to DMCC's duty to defend.

13. SUBCONTRACTORS.

13.1 The DMCC's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the Project is subject to prior approval by the City.

13.2 All contracts entered into between the DMCC and its subcontractor shall also provide that each subcontractor shall obtain insurance policies, which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. The DMCC shall require the subcontractor to obtain all policies described in section 11 of this Agreement in the amounts required by the City, which shall not be greater than the amounts required of the DMCC.

13.3 In any dispute between the DMCC and its subconsultants, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The DMCC agrees to defend and indemnify the City as described in section 12 of this Agreement should the City be made a party to any judicial or administrative proceeding to resolve any such dispute or should the City incur any costs in responding to third-party discovery requests.

14. NON-DISCRIMINATION. DMCC shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, military or veteran status, gender, gender identity, gender expression, sexual orientation, or any other class

protected under state, federal, or local law. DMCC shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to any class or category protected under state, federal, or local law and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. DMCC agrees to post in conspicuous places available to employees and applicants for employment any notices provided by City setting forth the provisions of this non-discrimination clause.

15. NOTICES. All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

City of Del Mar
 City Clerk
 1050 Camino del Mar
 Del Mar, CA 92014

Del Mar Community Connections
 Attn: President
 PO Box 2947
 Del Mar, CA 92014

16 ASSIGNABILITY. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the DMCC's duties be delegated or sub-contracted, without the express written consent of the City.

17. RESPONSIBILITY FOR EQUIPMENT. City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by DMCC or any of DMCC's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to DMCC by City. The acceptance or use of any such equipment by DMCC, DMCC's employees, or subcontractors shall be construed to mean that DMCC accepts full responsibility for and agrees to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

18. CALIFORNIA LAW; VENUE/MISC. This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. DMCC hereby waives any and all rights it might have pursuant to California Code of Civil Procedure section 394.

19. COMPLIANCE WITH LAWS. The DMCC shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720, et seq., relating to payment of prevailing wages for public works projects, if applicable. DMCC shall indemnify and defend the Indemnified Parties from and against any liability incurred due to any failure on the part of DMCC to comply with any applicable Laws.

To the extent DMCC is required to comply with prevailing wage requirements, DMCC does hereby acknowledge that they are aware of, have read, and understand the terms and implications of SB 854 and DMCC and any subconsultants ensure that they are familiar with and comply with its requirements. Such requirements include, but are not limited to, the registration

requirement with the Department of Industrial Relations, State of California (DIR), pursuant to Labor Code section 1725.5. As of March 1, 2015, in compliance with SB 854, the City requires all affected contractors and DMCCs to be registered with the DIR prior to submitting a bid or proposal on any eligible District project. As of April 1, 2015, failure to comply with the requirements of SB 854 by any contractor or DMCC, including registration with the DIR pursuant to Labor Code section 1725.5, shall be a material breach of this Agreement which may be terminated by the City in its sole and absolute discretion. Where applicable, this project is subject to compliance monitoring and enforcement by the DIR.

20. DMCC'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986. DMCC certifies that DMCC is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors, and DMCCs that are included in this Agreement.

21. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein.

22. AMENDMENTS. This Agreement may be modified or amended only by a written document executed by both DMCC and City and approved as to form by the City Attorney. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless agreed to in writing by both Parties.

23. NO WAIVER. No failure of either the City or the DMCC to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

24. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

25. DRAFTING AMBIGUITIES. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26. LEGAL FEES. In the event of the bringing of any action or suit by either party hereto against the other party hereunder to enforce or interpret any of the provisions, covenants or conditions of this Agreement, or arising out of any tortious conduct by either party incident to this Agreement, the prevailing party in such action or suit shall be entitled to recover all costs and expenses of suit, including reasonable attorneys' fees. In any action or suit brought to enforce this Agreement, the damages available shall be limited to specific performance or other such equitable relief that the court may order.

27. CONFLICTS BETWEEN TERMS. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

28. EXHIBITS INCORPORATED. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

29. SIGNING AUTHORITY. The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF DEL MAR,
a municipal corporation

DEL MAR COMMUNITY CONNECTIONS

By: _____
Ashley Jones, City Manager

By: _____
Robert S. Gans, President

ATTEST:

Nestor Machado, Acting City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney

EXHIBIT "A"

Del Mar Community Connections Senior Support Services Scope of Services July 1, 2023, through June 30, 2026

Del Mar Community Connections will provide the following critical support services to Del Mar senior residents and residents with accessibility needs.

Transportation Services

1. Sassy Chassis Shopping Van/Grocery Van
2. Foxy Flyer Wheelchair Accessible Van
3. Management of Volunteer Driver program
4. Medical and essential appointments
5. Personalized grocery appointments
6. DMCC Explorers series: Hiking/museums/cultural outings
7. Theater/Movie/Foodie Vans and Safari Park Shuttle: transportation to cultural events
8. Transportation to Covid-19 vaccination appointments

Healthy Aging and Educational Programs

1. Health and Wellness Premiere Speaker Series, hosting experts on topics such as the secrets of longevity, research on medical treatments, and self-advocacy issues
2. Informational sessions on topics specific to the senior lifestyle, such as scam prevention, decluttering, and estate planning
3. Partnerships with organizations such as the Alzheimer's Association, the Braille Institute, and the Southern Caregiver Resource Center
4. Computer Tutoring/Internet Class/Digital Den
5. Memoir writing workshop
6. Chair exercise class
7. Qigong with Ali
8. Sand Striders beach walking group
9. Annual Flu Shot Clinic
10. Medical Equipment such as wheelchairs and walkers available for loan
11. Remarkable Del Mar History monthly local history lesson from the Del Mar Historical Society
12. In development: Dementia Caregivers support group, regular dances focused on movement

Community Events and Activities

1. Tuesday Lunch Connections
2. In Home lunches for those who are primarily home bound
3. ROMEO Lunches (Retired Older Men Eating Out)
4. DMCC Diners mixed gender lunch group for eating out
5. Holiday Party, annual Ice Cream Social, and annual Champagne and Chocolate community celebration
6. Weekly Bridge, Mah Jongg, and Knitting Circle

Professional Services Agreement
Del Mar Community Connections - Senior Support Services
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7. Page Turners Book Talk group in partnership with the Del Mar library branch
8. Sage Investment Group Investing Interest Club
9. Singing Together singalong group
10. Host monthly office hours for current mayor (optional for mayor)
11. Mah Jongg and Bridge lessons



City of Del Mar Staff Report

TO: Honorable Mayor and City Council Members

FROM: Emily Torres, Management Analyst
Clem Brown, Assistant City Manager
Via Ashley Jones, City Manager

DATE: June 5, 2023

SUBJECT: Agreement with the Regional Task Force on Homelessness for Point-In-Time Count Services

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council: 1) Approve an Agreement with the Regional Task Force on Homelessness (RTFH) for Point-In-Time Count Services (Attachment A) for an initial three-year term from July 1, 2023, through June 30, 2026, and 2) Authorize the City Manager to execute the Agreement.

DISCUSSION/ANALYSIS:

The Regional Task Force on Homelessness (RTFH) is a San Diego 501c(3) non-profit and an integrated group of stakeholders committed to preventing and alleviating homelessness in San Diego by providing essential data on the issue of homelessness through an annual homeless count. The annual homeless Point-in-Time (PIT) Count is federally mandated by the Department of Housing and Urban Development (HUD), which requires an annual count of all persons experiencing homelessness both on the streets and in shelters on a single night in January. RTFH participates in and largely organizes the PIT count each year in San Diego County, providing this service for many agencies in San Diego County, including the City of Del Mar. Additionally, RTFH produces an annual report of their findings from the PIT Count.

The majority of RTFH's funding comes from federal grants, local government contracts, and philanthropy. Historically, RTFH has applied and received grant funding through Del Mar's Community Support Program to provide PIT services. However, since the City is federally mandated to participate in the PIT Count, and to ensure annual compliance, staff is recommending that the City enter into a professional services agreement with the RTFH. The initial term of the agreement is for a period of three years, with the option to extend the agreement by two (2) years.

City Council Action:

Staff made the determination that RTFH's services are exempt from the City's standard bid requirement because their services cannot be reasonably obtained from another source (Del Mar Municipal Code 7.04.090).

The City's compensation to RTFH for the PIT Count would be \$2,000 per fiscal year, for a total of \$6,000 for the initial three-year term. Attachment A includes the proposed Agreement with RTFH and a detailed scope of work. Staff worked closely with RTFH to develop the scope of work for the PIT Count to ensure Del Mar will remain in compliance with HUD requirements.

FISCAL IMPACT:

There is no fiscal action to be taken by the City Council related to this agenda item. The \$2,000 annual funding requirement is included in the proposed budget for Fiscal Year (FY) 2023-2024 and FY 2024-2025.

ENVIRONMENTAL REVIEW:

The proposed City Council action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

This is an operational item not included on the City Council list of Goals/Priorities.

ATTACHMENTS:

Attachment A – Agreement with Regional Task Force on Homelessness

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DEL MAR AND THE REGIONAL TASK FORCE ON HOMELESSNESS
FOR POINT-IN-TIME COUNT SERVICES**

This Agreement is made and entered into this 1st day of July, 2023, by and between the City of Del Mar, a Charter City and a municipal corporation (“City”), and the Regional Task Force on Homelessness (“RTFH”) (collectively “Parties”).

WHEREAS, the City desires to enter into an agreement with RTFH to perform the annual homeless Point-in-time count in the City of Del Mar as federally mandated by the Department of Housing and Urban Development (“Services”). Said work is to be performed in accordance with the terms and conditions set forth below and as described in the scope of services, attached hereto as Exhibit “A” and incorporated herein; and

WHEREAS, the City has determined that RTFH is qualified by experience and ability to perform the services desired by City, and RTFH is willing to perform such services; and

WHEREAS, RTFH will conduct all the work as described and detailed in this Agreement to be provided to the City.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

1. SERVICES.

1.1 Scope of Services. RTFH shall perform the Services as set forth in the written Scope of Services, attached hereto as **Exhibit “A”** and incorporated herein. Such services shall be provided at the direction of the City.

1.2. City Modification of Scope of Services. City may order changes to the Scope of Services within the general scope of this Agreement consisting of additions, deletions, or other revisions. If such changes cause a change in the RTFH’s cost of, or time required for, completion of the Scope of Services, an equitable adjustment to RTFH’s compensation and/or contract time shall be made, subject to the City’s approval. All such changes shall be authorized in writing, executed by RTFH and City. If such a change results in an extension of the term of this Agreement or increases the maximum amount to be paid under this Agreement, no such change shall have any force or effect unless an amendment to this Agreement is approved by the City Council.

2. DURATION OF AGREEMENT.

2.1 Term, Time for Performance. This Agreement shall be effective for an initial period of three (3) years beginning July 1, 2023, through June 30, 2026. Upon satisfactory performance and written agreement of both Parties, the Agreement may be extended for an additional two (2) year period.

Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

2.2 Delay. Any delay resulting from causes beyond the control of RTFH may merit an extension of time for the completion of the Scope of Services. When such delay occurs, RTFH shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the Consulting Services when justified by the circumstances provided that no extension of time shall be granted which would extend the time for performance beyond the date specified in section 2.1 above.

2.3 City's Right to Terminate for Default. Should RTFH be in default of any covenant or condition hereof, City may immediately terminate this Agreement for cause if RTFH fails to cure the default within ten (10) calendar days of receiving written notice of the default.

2.4 City's Right to Terminate without Cause. Without limiting its rights in the event of RTFH's default, City may terminate this Agreement, without cause, by giving written notice to RTFH. Such termination shall be effective upon receipt of the written notice. RTFH shall be compensated for all effort and material expended on behalf of City under the terms of this Agreement, up to the effective date of termination. All personal property remaining in City facilities or on City property thirty (30) days after the expiration or termination of this Agreement shall be, at City's election, considered the property of City.

3. PERFORMANCE AFTER TERMINATION. Upon termination of this Agreement as provided herein, RTFH shall, within such reasonable time period as may be directed by City Manager, complete those items of work which are in various stages of completion and which City Manager determines are necessary to be completed by RTFH to allow the project to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by RTFH shall be delivered to the City Manager, upon her request, as property of City.

4. COMPENSATION.

4.1 Amount. Compensation to RTFH shall be \$2,000 per year to perform the Scope of Services contained in Exhibit "A", and to be paid as a lump sum at the beginning of each fiscal year upon execution of the Agreement.

4.2 Additional Services. City may, as the need arises or in the event of an emergency, request additional services of RTFH. Should such additional services be required, Compensation therefore shall be paid to the RTFH in accordance with Scope of Services contained in Exhibit "A." City and RTFH shall agree to the costs prior to commencement of such work. G

5. INDEPENDENT CONTRACTOR. RTFH is, for all purposes arising out of this Agreement, an independent contractor. The RTFH has and shall retain the right to exercise full control and supervision of all persons assisting the RTFH in the performance of said services hereunder, the City only being concerned with the finished results of the work being performed. Neither RTFH nor RTFH's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, RTFH being solely responsible for all such matters, as well as, compliance with social security and income tax withholding and all other regulations and laws governing such matters.

6. STATEMENT OF EXPERIENCE. RTFH agrees and represents by executing this Agreement that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent RTFH using the degree of care and skill ordinarily exercised by reputable RTFH's practicing in the same field of service in the State of California. Additionally, RTFH and all of RTFH's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

7. AUDIT OF RECORDS.

7.1 At any time during normal business hours and as often as may be deemed necessary, the RTFH shall make available to a representative of City for examination all of its records with respect to all matters covered by this Agreement and shall permit City to audit, examine, and/or reproduce such records. RTFH shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2 The RTFH shall include the City's right to audit under this section in any and all of their subcontracts and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY. All services performed by RTFH, including, but not limited to, all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by RTFH, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to RTFH, at the time that it was disclosed to RTFH by the City, (b) subsequently becomes publicly known through no act or omission of RTFH or (c) otherwise becomes known to RTFH other than through disclosure by the City. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the City. The sole purpose of this section is to prevent disclosure of City's confidential and proprietary information by RTFH or subcontractors.

9. CONFLICTS OF INTEREST.

9.1 RTFH shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. RTFH shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the RTFH has a financial interest as defined in Government Code § 87103. RTFH represents that it has no knowledge of any financial interests, which would require it to disqualify itself from any matter on which it might perform services for the City.

10. OWNERSHIP OF DOCUMENTS. All documents, data, studies, drawings, maps, models, photographs and reports prepared by RTFH under this Agreement shall be considered the property of City. RTFH shall be permitted to reference, and use said materials for use in future studies, work, and marketing so long as said materials are considered "public documents" and

are not subject to attorney-client privilege, or the subject of pending closed or executive session discussions.

11. INSURANCE

11.1 RTFH shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the RTFH, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" and are admitted to do business in the State of California, unless otherwise approved in writing by the City's Risk Manager.

11.2 RTFH's liabilities, including but not limited to RTFH's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement.

11.3 Types and Amounts Required. RTFH shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

11.3.1 Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1,000,000** per occurrence and subject to an annual aggregate of **\$2,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

11.3.2 Commercial Automobile Liability. For all of the RTFH's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of **\$300,000** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

11.3.3 Workers' Compensation. For all of the RTFH's employees who are subject to this Agreement and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum **\$1,000,000** employers' liability coverage. The RTFH shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

11.3.4 Social Services Professional Liability. Social Services Professional Liability (errors and omissions) coverage with a limit of **\$1,000,000** per claim and **\$2,000,000** annual aggregate. The RTFH shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this Agreement whichever occurs last. The RTFH agrees that for the

time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

11.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions are the responsibility of the RTFH and must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers, or (2) the RTFH shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.5 Additional Required Provisions. The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

11.5.1 The City, its officers, officials, employees, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the City.

11.5.2 The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

11.6 Verification of Coverage. RTFH shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Section 11. The endorsement should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

12. DEFENSE AND INDEMNIFICATION.

12.1 RTFH agrees to indemnify, defend (with attorneys approved by City), and hold harmless the City, and its officers, officials, agents and employees (the "Indemnified Parties") from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the RTFH, its employees, agents, and subcontractors performance of services under this Agreement. RTFH's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the City or its elected officials, officers, agents, and employees. RTFH's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The Parties expressly agree that any payment, attorney's fees, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

12.2 This indemnity is in addition to any other rights or remedies which City may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, at its sole discretion, reserve, retain or apply any monies due to RTFH under this Agreement for the purpose of resolving such claims; provided however, that City may release such funds if RTFH provides City with reasonable assurances of protection of the City's interest. The City shall, in its sole discretion determine whether such assurances are reasonable.

12.3 RTFH agrees that its duty to defend arises upon an allegation of liability based upon the performance of services under this Agreement by RTFH, its officers, agents, representatives, employees, sub-RTFHs, or anyone for whom RTFH is liable and that an adjudication of RTFH's liability is not a condition precedent to RTFH's duty to defend.

13. SUBCONTRACTORS.

13.1 The RTFH's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the Project is subject to prior approval by the City.

13.2 All contracts entered into between the RTFH and its subcontractor shall also provide that each subcontractor shall obtain insurance policies, which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. The RTFH shall require the subcontractor to obtain all policies described in section 11 of this Agreement in the amounts required by the City, which shall not be greater than the amounts required of the RTFH.

13.3 In any dispute between the RTFH and its subconsultants, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The RTFH agrees to defend and indemnify the City as described in section 12 of this Agreement should the City be made a party to any judicial or administrative proceeding to resolve any such dispute or should the City incur any costs in responding to third-party discovery requests.

14. NON-DISCRIMINATION. RTFH shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, military or veteran status, gender, gender identity, gender expression, sexual orientation, or any other class protected under state, federal, or local law. RTFH shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to any class or category protected under state, federal, or local law and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. RTFH agrees to post in conspicuous places available to employees and applicants for employment any notices provided by City setting forth the provisions of this non-discrimination clause.

15. NOTICES. All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

City of Del Mar
City Clerk
1050 Camino del Mar
Del Mar, CA 92014

RTFH
Tamera Kohler
4699 Murphy Canyon Road
San Diego, CA 92123

16 ASSIGNABILITY. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the RTFH's duties be delegated or sub-contracted, without the express written consent of the City.

17. RESPONSIBILITY FOR EQUIPMENT. City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by RTFH or any of RTFH's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to RTFH by City. The acceptance or use of any such equipment by RTFH, RTFH's employees, or subcontractors shall be construed to mean that RTFH accepts full responsibility for and agrees to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

18. CALIFORNIA LAW; VENUE/MISC. This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. RTFH hereby waives any and all rights it might have pursuant to California Code of Civil Procedure section 394.

19. COMPLIANCE WITH LAWS. The RTFH shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720, et seq., relating to payment of prevailing wages for public works projects, if applicable. RTFH shall indemnify and defend the Indemnified Parties from and against any liability incurred due to any failure on the part of RTFH to comply with any applicable Laws.

To the extent RTFH is required to comply with prevailing wage requirements, RTFH does hereby acknowledge that they are aware of, have read, and understand the terms and implications of SB 854 and RTFH and any subconsultants ensure that they are familiar with and comply with its requirements. Such requirements include, but are not limited to, the registration requirement with the Department of Industrial Relations, State of California (DIR), pursuant to Labor Code section 1725.5. As of March 1, 2015, in compliance with SB 854, the City requires all affected contractors and RTFHs to be registered with the DIR prior to submitting a bid or proposal on any eligible District project. As of April 1, 2015, failure to comply with the requirements of SB 854 by any contractor or RTFH, including registration with the DIR pursuant to Labor Code section 1725.5, shall be a material breach of this Agreement which may be terminated by the City in its sole and absolute discretion. Where applicable, this project is subject to compliance monitoring and enforcement by the DIR.

20. RTFH'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986. RTFH certifies that RTFH is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors, and RTFHs that are included in this Agreement.

21. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein.

22. AMENDMENTS. This Agreement may be modified or amended only by a written document executed by both RTFH and City and approved as to form by the City Attorney. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless agreed to in writing by both Parties.

23. NO WAIVER. No failure of either the City or the RTFH to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

24. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

25. DRAFTING AMBIGUITIES. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26. LEGAL FEES. In the event of the bringing of any action or suit by either party hereto against the other party hereunder to enforce or interpret any of the provisions, covenants or conditions of this Agreement, or arising out of any tortious conduct by either party incident to this Agreement, the prevailing party in such action or suit shall be entitled to recover all costs and expenses of suit, including reasonable attorneys' fees. In any action or suit brought to enforce this Agreement, the damages available shall be limited to specific performance or other such equitable relief that the court may order.

27. CONFLICTS BETWEEN TERMS. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

28. EXHIBITS INCORPORATED. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

29. SIGNING AUTHORITY. The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF DEL MAR,
a municipal corporation

**REGIONAL TASK FORCE ON
HOMELESSNESS**

By: _____
Ashley Jones, City Manager

By: _____
Tamera Kohler, Chief Executive Officer

ATTEST:

Nestor Machado, Acting City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney

EXHIBIT "A"

**Regional Task Force on Homelessness
Point-In-Time Count Scope of Services
July 1, 2023, through June 30, 2026**

The annual homeless Point-in-Time (PIT) count is federally mandated by the Department of Housing and Urban Development (HUD) to count all persons experiencing homelessness both on the streets and in shelters on a single night each year in January. The Regional Taskforce on Homelessness will perform the annual PIT count for the City of Del Mar and will write documentation (report) of the findings, each year during the term of the agreement.



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Emily Torres, Management Analyst
Clem Brown, Assistant City Manager
Via Ashley Jones, City Manager

DATE: June 5, 2023

SUBJECT: Funding and Service Agreement with Del Mar Community Connections for the Del Mar Rental Assistance Program

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council: 1) Approve a Funding and Service Agreement with Del Mar Community Connections (DMCC) for management and administration of the Del Mar Rental Assistance Program until the Program naturally terminates due to attrition (Attachment A); and 2) Authorize the City Manager to execute the Agreement.

BACKGROUND:

In 1988, the City's Rental Assistance Program (Program) was created to provide affordable housing opportunities within the City of Del Mar. The Program has been funded through the Housing Assistance Fund, which is a special revenue fund made up of housing in-lieu fees collected by the City. Currently, there are four participants in the Program.

Unfortunately, the cost to administer the Program has increased over time to approximately \$94,000 annually, while the Housing in-lieu fee revenue used to support the Program has continued to significantly decline to a level that is insufficient to cover the costs of the Program. Therefore, making the Program financially unsustainable for the City.

On September 7, 2021, City staff provided an in-depth overview of the Rental Assistance Program and Housing Assistance Fund, at which time the City Council directed staff to work on phasing out the Program and to coordinate with DMCC on a smooth transition of the Program participants by June 30, 2022.

On May 2, 2022, the City Council authorized a one-year extension of the program through June 30, 2023, to provide more time for staff and the program participants to work with the County Health and Human Services Department to identify other available rental subsidy programs or suitable housing options.

City Council Action:

On March 6, 2023, DMCC requested that the City agree to continue partially funding the Program and let DMCC take over all aspects of Program administration and management to allow the four remaining participants to continue in the Program until such time that the Program naturally ends through attrition. As part of the proposal authorized by the City Council, the City will provide DMCC with a minimum of 50% of the projected Program costs annually at the start of the City's fiscal year. The City's contributions to the Program are anticipated to be approximately \$40,000 annually, but may vary depending on actual Program expenses and Housing In-Lieu revenues received per fiscal year.

DISCUSSION/ANALYSIS:

Starting July 1, 2023, DMCC will assume all responsibility for the Program. Per the Services and Funding Agreement between the City and DMCC, the City will pay a minimum of 50% of the Program costs, but may vary depending on the total amount of Housing In-Lieu revenues received by the City. For context, the annual cost of the Program, minus DMCC's previous \$14,000 fee for Program administration, is currently approximately \$80,000. If the Program costs generally remain the same, the cost to the City annually would be approximately \$40,000. The annual contribution by the City will be based on the actual Program costs and Housing In-Lieu revenues received, which will be confirmed through a reconciliation completed by the City and DMCC at the end of each fiscal year.

The Program will continue for the current four participants only until such time that the Program naturally terminates due to attrition. No new participants will be accepted into the Program moving forward, and other than for DMCC Program fundraising purposes, there will be no further promotion of the Program. Additionally, starting July 1, 2023, the City of Del Mar will no longer be referenced on any agreements with program participants, leases, program documents, etc., nor will the City be making any payments related to the Program to anyone other than the DMCC as described in the Funding and Service Agreement.

FISCAL IMPACT:

There is no fiscal action to be taken by the City Council related to this agenda item. Funds for this program are included in the City's proposed next two-year operating and capital budget. The City will provide DMCC with 50% of the projected program costs at the start of each fiscal year. The City's contribution to the Program is anticipated to be approximately \$40,000 annually but may vary depending on program expenses.

ENVIRONMENTAL IMPACT:

The proposed City Council action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

NEXUS TO CITY COUNCIL GOALS & PRIORITIES

This is an operational item not included on the list of Council Goals/Priorities.

ATTACHMENTS:

Attachment A – Funding and Service Agreement with Del Mar Community Connections

**FUNDING AND SERVICE AGREEMENT BETWEEN
THE CITY OF DEL MAR AND DEL MAR COMMUNITY CONNECTIONS
FOR RENTAL ASSISTANCE SUBSIDY PROGRAM**

This Agreement is made and entered into this 1st day of July, 2023, by and between the City of Del Mar, a Charter City and a municipal corporation (“City”), and Del Mar Community Connections (“DMCC”), a California Public Benefit Corporation (collectively “Parties”).

WHEREAS, the Parties desire to enter into an agreement whereby the DMCC assumes all responsibility for administration of the Del Mar Rental Assistance Subsidy Program (“Program”), and whereby the City will provide partial funding for the Program through the life of the Program as further discussed in Exhibit “A”. Said work is to be performed and funding to be provided in accordance with the terms and conditions set forth below and as described in the scope of services and compensation, attached hereto as Exhibit “A” and incorporated herein; and

WHEREAS, the City has determined that DMCC is qualified by experience and ability to perform the services desired by City, and DMCC is willing to perform such services; and

WHEREAS, DMCC will conduct all the work as described and detailed in this Agreement to be provided to the City.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

1. SERVICES.

Attachment A

1.1 Scope of Services. DMCC shall perform the Services as set forth in the written Scope of Services, attached hereto as **Exhibit “A”** and incorporated herein. Such services shall be provided at the direction of the City.

2. DURATION OF AGREEMENT.

2.1 Term, Time for Performance. This Agreement shall be effective as of the date first written above, until such time that the program is terminated. The Agreement will be considered terminated at such time that there are no longer any participants in the Program.

Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

2.2 Delay. Any delay resulting from causes beyond the control of DMCC may merit an extension of time for the completion of the Scope of Services. When such delay occurs, DMCC shall immediately notify the Project Coordinator, as designated by the City, in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the Services when justified by the circumstances provided that no extension of time shall be granted which would extend the time for performance beyond the date specified in section 2.1 above.

2.3 City’s Right to Terminate for Default. Should DMCC be in default of any covenant or condition hereof for which DMCC is responsible, City may immediately terminate this

Agreement for cause if DMCC fails to cure the default as soon as practicable, and in no event later than thirty (30) calendar days after receiving written notice of the default.

2.4 City's Right to Terminate without Cause. Without limiting its rights in the event of DMCC's default, City may terminate this Agreement, without cause, by giving written notice to DMCC consistent with direction provided by the City Council in a public meeting. Such termination shall be effective no earlier than six (6) months following receipt of said written notice. DMCC shall be compensated for all effort and material expended on behalf of City under the terms of this Agreement, up to the effective date of termination. All personal property remaining in City facilities or on City property thirty (30) days after the expiration or termination of this Agreement shall be, at City's election, considered the property of City.

3. PERFORMANCE AFTER TERMINATION. Upon termination of this Agreement as provided herein, DMCC shall, within such reasonable time period as may be directed by City Manager, complete those items of work which are in various stages of completion and which City Manager determines are necessary to be completed by DMCC to allow the Program administration to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, reports, and other materials prepared by DMCC shall be delivered to the City Manager, upon her request, as property of City. The City shall reimburse DMCC for any costs or expenses that DMCC incurs in connection with work that the City requires DMCC to perform subsequent to the effective date of termination.

4. COMPENSATION.

4.1 Amount. The City will provide DMCC with 50% of the projected Program costs at the start of the City's fiscal year to be paid as a lump sum (July 1 – June 30). For budgeting purposes, DMCC will provide the City with projected costs for the coming fiscal year no later than April, which will not include administrative costs incurred by DMCC to administer the Program. DMCC has agreed to waive any administrative costs to operate the Program as part of their contribution to allow the Program to continue. The City's contribution to the Program is anticipated to be approximately \$40,000 annually, but may vary depending on actual Program expenses.

At the end of each fiscal year, the City will review the revenues received in the City's Housing In-Lieu Fund, and will determine if there are additional funds to be contributed to help offset the cost of the Program for the fiscal year. Additionally, at the end of the fiscal year, DMCC will provide a reconciliation of the actual expenses for the Program. If there are no additional in-lieu fee revenues to be contributed toward the Program, and it is determined by a reconciliation of actual Program costs that the City contributed more than 50% toward the cost of the Program for the fiscal year, those additional funds paid may be carried over and applied to the following fiscal year's Program costs. If there are additional in-lieu revenues, such revenues shall be contributed to the operation of the Program for the fiscal year in which said revenues were earned, and shall not be carried over as a credit against payments owed by the City in future fiscal years.

4.2 INTENTIONALLY OMITTED

5. INDEPENDENT CONTRACTOR. DMCC is, for all purposes arising out of this Agreement, an independent contractor. DMCC has and shall retain the right to exercise full control and supervision of all persons assisting the DMCC in the performance of said services hereunder,

the City only being concerned with the finished results of the work being performed. Neither DMCC nor DMCC's employees shall in any event be entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, DMCC being solely responsible for all such matters, as well as, compliance with social security and income tax withholding and all other regulations and laws governing such matters.

6. STATEMENT OF EXPERIENCE. DMCC agrees and represents by executing this Agreement that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent provider of such Services using the degree of care and skill ordinarily exercised by reputable service providers practicing in the same field of service in the State of California. Additionally, DMCC and all of DMCC's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

7. AUDIT OF RECORDS.

7.1 At any time during normal business hours and as often as may be deemed necessary, DMCC shall make available to a representative of City for examination all of its records with respect to all matters covered by this Agreement and shall permit City to audit, examine, and/or reproduce such records. DMCC shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2 The DMCC shall include the City's right to audit under this section in any and all of their subcontracts and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY. All services performed by DMCC, including, but not limited to, all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by DMCC, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to DMCC, at the time that it was disclosed to DMCC by the City, (b) subsequently becomes publicly known through no act or omission of DMCC or (c) otherwise becomes known to DMCC other than through disclosure by the City. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the City. The sole purpose of this section is to prevent disclosure of City's confidential and proprietary information by DMCC or subcontractors.

9. CONFLICTS OF INTEREST.

9.1 DMCC shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. DMCC shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the DMCC has a financial interest as defined in Government Code § 87103. DMCC represents that it has no knowledge of

any financial interests, which would require it to disqualify itself from any matter on which it might perform services for the City.

10. INTENTIONALLY OMITTED

11. INSURANCE

11.1 DMCC shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the DMCC, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" and are admitted to do business in the State of California, unless otherwise approved in writing by the City's Risk Manager.

11.2 DMCC's liabilities, including but not limited to DMCC's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement.

11.3 Types and Amounts Required. DMCC shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

11.3.1 Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$1,000,000** per occurrence and subject to an annual aggregate of **\$2,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

11.3.2 Commercial Automobile Liability. For all of the DMCC's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of **\$300,000** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

11.3.3 Workers' Compensation. For all of the DMCC's employees who are subject to this Agreement and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum **\$1,000,000** employers' liability coverage. The DMCC shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

11.3.4 Social Services Professional Liability. Social Services Professional Liability (errors and omissions) coverage with a limit of **\$1,000,000** per claim and **\$2,000,000** annual aggregate. The DMCC shall ensure both that (1) the policy retroactive date is on

or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this Agreement whichever occurs last. The DMCC agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

11.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions are the responsibility of the DMCC and must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers, or (2) the DMCC shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.5 Additional Required Provisions. The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

11.5.1 The City, its officers, officials, employees, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the City.

11.5.2 The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

11.6 Verification of Coverage. DMCC shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Section 11. The endorsement should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

12. DEFENSE AND INDEMNIFICATION.

12.1 DMCC agrees to indemnify, defend (with attorneys approved by City), and hold harmless the City, and its officers, officials, agents and employees (the "Indemnified Parties") from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the DMCC, its employees', agents', and subcontractors' performance of services under this Agreement. DMCC's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the City or its elected officials, officers, agents, and employees. DMCC's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The Parties expressly agree that any payment, attorney's fees, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

12.2 This indemnity is in addition to any other rights or remedies which City may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, at its sole discretion, reserve, retain or apply any monies due to DMCC under this Agreement for the purpose of resolving such claims; provided however, that City may release such funds if DMCC provides City with reasonable assurances of protection of the City's interest. The City shall, in its sole discretion determine whether such assurances are reasonable.

12.3 DMCC agrees that its duty to defend arises upon an allegation of liability based upon the performance of services under this Agreement by DMCC, its officers, agents, representatives, employees, sub-DMCCs, or anyone for whom DMCC is liable and that an adjudication of DMCC's liability is not a condition precedent to DMCC's duty to defend.

13. SUBCONTRACTORS.

13.1 The DMCC's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the Project is subject to prior approval by the City.

13.2 All contracts entered into between the DMCC and its subcontractor shall also provide that each subcontractor shall obtain insurance policies, which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. DMCC shall require the subcontractor to obtain all policies described in section 11 of this Agreement in the amounts required by the City, which shall not be greater than the amounts required of DMCC.

13.3 In any dispute between the DMCC and its subconsultants, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The DMCC agrees to defend and indemnify the City as described in section 12 of this Agreement should the City be made a party to any judicial or administrative proceeding to resolve any such dispute or should the City incur any costs in responding to third-party discovery requests.

14. NON-DISCRIMINATION. DMCC shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, military or veteran status, gender, gender identity, gender expression, sexual orientation, or any other class protected under state, federal, or local law. DMCC shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to any class or category protected under state, federal, or local law and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. DMCC agrees to post in conspicuous places available to employees and applicants for employment any notices provided by City setting forth the provisions of this non-discrimination clause.

15. NOTICES. All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

Funding & Service Agreement
 Del Mar Community Connections - Rental Assistance Subsidy Program
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City of Del Mar
 Attn: City Clerk
 1050 Camino Del Mar
 Del Mar, CA 92014

Del Mar Community Connections
 Attention: DMCC President
 PO Box 2947
 Del Mar, CA 92014

16 ASSIGNABILITY. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the DMCC's duties be delegated or sub-contracted, without the express written consent of the City.

17. RESPONSIBILITY FOR EQUIPMENT. City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by DMCC or any of DMCC's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to DMCC by City. The acceptance or use of any such equipment by DMCC, DMCC's employees, or subcontractors shall be construed to mean that DMCC accepts full responsibility for and agrees to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

18. CALIFORNIA LAW; VENUE/MISC. This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. DMCC hereby waives any and all rights it might have pursuant to California Code of Civil Procedure section 394.

19. COMPLIANCE WITH LAWS. The DMCC shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720, et seq., relating to payment of prevailing wages for public works projects, if applicable. DMCC shall indemnify and defend the Indemnified Parties from and against any liability incurred due to any failure on the part of DMCC to comply with any applicable Laws.

To the extent DMCC is required to comply with prevailing wage requirements, DMCC does hereby acknowledge that they are aware of, have read, and understand the terms and implications of SB 854 and DMCC and any subconsultants ensure that they are familiar with and comply with its requirements. Such requirements include, but are not limited to, the registration requirement with the Department of Industrial Relations, State of California (DIR), pursuant to Labor Code section 1725.5. As of March 1, 2015, in compliance with SB 854, the City requires all affected contractors and DMCCs to be registered with the DIR prior to submitting a bid or proposal on any eligible District project. As of April 1, 2015, failure to comply with the requirements of SB 854 by any contractor or DMCC, including registration with the DIR pursuant to Labor Code section 1725.5, shall be a material breach of this Agreement which may be terminated by the City in its sole and absolute discretion. Where applicable, this project is subject to compliance monitoring and enforcement by the DIR.

20. DMCC'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986. DMCC certifies that DMCC is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for

employment of all agents, employees, subcontractors, and DMCCs that are included in this Agreement.

21. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein.

22. AMENDMENTS. This Agreement may be modified or amended only by a written document executed by both DMCC and City and approved as to form by the City Attorney. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless agreed to in writing by both Parties.

23. NO WAIVER. No failure of either the City or DMCC to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

24. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

25. DRAFTING AMBIGUITIES. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26. LEGAL FEES. In the event of the bringing of any action or suit by either party hereto against the other party hereunder to enforce or interpret any of the provisions, covenants or conditions of this Agreement, or arising out of any tortious conduct by either party incident to this Agreement, the prevailing party in such action or suit shall be entitled to recover all costs and expenses of suit, including reasonable attorneys' fees. In any action or suit brought to enforce this Agreement, the damages available shall be limited to specific performance or other such equitable relief that the court may order.

27. CONFLICTS BETWEEN TERMS. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

28. EXHIBITS INCORPORATED. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

29. SIGNING AUTHORITY. The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has

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been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF DEL MAR,
a municipal corporation

DEL MAR COMMUNITY CONNECTIONS

By: _____
Ashley Jones, City Manager

By: _____
Robert S. Gans, President

ATTEST:

Nestor Machado, Acting City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney

EXHIBIT "A"
SCOPE OF SERVICES

Del Mar Community Connections
Rental Assistance Subsidy Program

Del Mar Community Connections ("DMCC"), in funding partnership with the City of Del Mar ("City"), has agreed to assume all administration and monitoring of the Del Mar Rental Assistance Subsidy Program ("Program") to keep the Program running for existing participants.

The Rental Assistance Subsidy Program will continue to run for current participants, and only current participants, until discontinued through natural attrition in program participation. Program costs are anticipated to decline over time as participants leave the program through attrition and, as such, no new participants will be accepted into the Program moving forward. In addition, no waitlists or promotion of the Program will take place during the term of this Agreement, except in conjunction with fundraising efforts spearheaded by DMCC. The sole purpose and intent of this Agreement is to maintain and continue funding the Program for those currently participating in the Program until such time that the Program naturally terminates due to attrition.

The City has agreed to fund a minimum of 50% of the Program costs (or more depending on annual in-lieu fee revenues, as further described in Section 4.1). The City's contributions to the Program are anticipated to be approximately \$40,000 for the fiscal year ending June 30, 2024, and will be paid as a lump sum at the beginning of each fiscal year (July 1) during the term of the Agreement. DMCC agrees to assume responsibility for the remaining cost of the Program through their own private fundraising efforts, subject to the availability of in-lieu fee revenues, as described in Section 4.1 of the Agreement.

Starting July 1, 2023, the City of Del Mar shall no longer be referenced on any agreements with program participants, leases, etc., nor will the City be making any payments to anyone other than DMCC.

DMCC agrees to administer and monitor the Rental Assistance Subsidy Program, which includes the following services:

1. Conduct inspections and financial verifications for all Program participants annually.
2. Maintain detailed records and files of all annual inspections and financial information for Program participants.
3. Maintain records and documentation that all participants in the Program continue to meet the Area Median Income limits of 30% and perform steps to remove participants from the Program should they exceed this limit at any point.
4. Serve as intermediary between Program participants and their respective landlords, as needed.
5. Keep detailed financial records of the funds received by the City for the Program costs and agree to send Program budgets or records when/if needed by the City.
6. Provide an annual report to the City each year in July, for the prior fiscal year activities, including a status of the participants and a reconciliation of actual Program expenditures.



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Kseniia Izgarskaia, Associate Management Analyst
Monica Molina, Finance Manager/Treasurer
Via Ashley Jones, City Manager

DATE: June 5, 2023

SUBJECT: Agreement with CorVel Enterprise Comp, Inc. for Workers' Compensation and Claims Administration Services

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council: 1) Approve a Professional Services Agreement with CorVel Enterprise Comp, Inc. (Attachment A) to provide third party workers' compensation and claims administration services; and 2) Authorize the City Manager to execute the Agreement.

DISCUSSION/ANALYSIS:

The City of Del Mar workers' compensation (WC) program is self-insured and requires a third-party administrator (TPA) to administer the program. Since 2017, the City's workers' compensation program has been administered by TRISTAR Risk Management Services (TRISTAR). TRISTAR manages the City's workers' compensation claims including establishing and maintaining files on each case; establishing reserves; adjusting claims; making medical, compensation and loss payments; recommending settlement amounts; and preparing the required reporting on behalf of the City.

While the current agreement with TRISTAR has no expiration date, as a best management practice and in order to ensure that the City is receiving high quality services at a competitive market rate, staff undertook a joint effort with the City of Solana Beach and issued a Request for Proposals (RFP) 2022-07 for third party WC claims administration on September 16, 2022.

The RFP requested that TPAs address the following areas in their proposals: standards for claims handling; database management; investigative unit; utilization review process; bill review process; experience with PRISM, the City's insurance Joint Powers Authority (JPA); PRISM standards and reporting requirements; COVID-19 claims processing; and various other management practices and standards pertinent to workers' compensation claims processing.

During the solicitation period, three proposals were received from TRISTAR, CorVel Enterprise Comp, Inc. (CorVel), and Elite Claims Management, Inc. The proposals were carefully evaluated by City staff based on experience, qualifications, and the quality of

City Council Action:

services delivered under prior contracts with the City. Proposed costs and fees were also evaluated to ensure they were in line with current market rates for the services to be provided.

After a thorough review of the submitted proposals, CorVel was identified by staff as having the strongest proposal and the firm best suited to meet the City's current and future needs. CorVel has over 35 years of experience providing WC TPA services for more than 120 municipalities and public entities across the United States including cities, counties, states, public transportation, and public education entities. Staff recommends that the City enter into an agreement with CorVel, which will improve the quality of services provided to the City and ensure excellent customer service support to City employees experiencing a work-related injury or illness.

If approved, CorVel is expected to take over all current workers' compensation claims and begin handling new claims on July 1, 2023. The initial term of the agreement will expire on June 30, 2028, with the option to extend the agreement for an additional two-year period upon satisfactory performance. The transition of WC TPA services from TRISTAR to CorVel will include the following: electronic files data transfer; movement of physical files; benefit payment transfers; and the transition of pending utilization review authorizations. Staff will work closely with TRISTAR and CorVel to ensure a smooth transition and uninterrupted WC TPA services to the City and its employees.

FISCAL IMPACT:

Approval of this item will require an amendment to the Fiscal Year 2022-2023 Operating and Capital Budget, as listed in the table below, to cover implementation fees which consist of transferring client files, creating claims handling instructions, and setting up the online web portal.

PROGRAM	FUND	ACCOUNT	AMOUNT
Contractual Services	Workers' Compensation	50.5420.3200	\$13,000

Funds for ongoing WC TPA services under the new agreement will be included in the Fiscal Year 2023-2024 and 2024-2025 Operating and Capital Budget. It is anticipated that ongoing annual fees for CorVel services will be lower than fees currently paid under the agreement with TRISTAR.

ENVIRONMENTAL REVIEW:

The proposed City Council action does not constitute a "project" under the definition set forth in the California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

This is an operational item and not included on the City Council's list of Goals and Priorities.

ATTACHMENTS:

Attachment A – Agreement with CorVel Enterprise Comp, Inc.

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF DEL MAR AND CORVEL ENTERPRISE COMP, INC.
FOR THIRD PARTY WORKERS' COMPENSATION AND
CLAIMS ADMINISTRATION SERVICES**

This Professional Services Agreement ("Agreement") is made and entered into this 1st day of July, 2023 by and between the City of Del Mar, a Charter City and a municipal corporation ("City"), and CorVel Enterprise Comp, Inc. ("Consultant") (collectively "Parties").

WHEREAS, the City desires to employ a consultant to provide third party workers' compensation and claims administration services ("Consulting Services"). Said work is to be performed in accordance with the terms and conditions set forth below and as described in the scope of services, attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the City has initially determined that Consultant is qualified by experience and ability to perform the services desired by City, and Consultant is willing to perform such services; and

WHEREAS, Consultant will conduct all the work as described and detailed in this Agreement to be provided to the City.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

1. CONSULTING SERVICES.

1.1 Scope of Services. The Consultant shall perform the Consulting Services as set forth in the written Scope of Services, attached hereto as **Exhibit "A"** and incorporated herein. Additionally, the Description of Services to be provided shall be attached hereunder the attached hereto **Exhibit "C."** Such services shall be provided at the direction of the City.

1.2. City Modification of Scope of Services. City may order changes to the Scope of Services within the general scope of this Agreement consisting of additions, deletions, or other revisions. If such changes cause a change in the Consultant's cost of, or time required for, completion of the Scope of Services, an equitable adjustment to Consultant's compensation and/or contract time shall be made, subject to the City's approval. All such changes shall be authorized in writing, executed by Consultant and City. If such a change results in an extension of the term of this Agreement or increases the maximum amount to be paid under this Agreement, no such change shall have any force or effect unless an amendment to this Agreement is approved by the City Council.

2. DURATION OF AGREEMENT.

2.1 Term, Time for Performance. This Agreement shall be effective for a period of five years beginning on July 1, 2023 and ending on June 30, 2028. The agreement may be extended for an additional two (2) year period, upon written approval of both parties. Time is of the essence for this Agreement and each provision of this Agreement, unless otherwise specified in this Agreement.

2.2 Delay. Any delay occasioned by causes beyond the control of Consultant may merit an extension of time for the completion of the Scope of Services. When such delay occurs, Consultant shall immediately notify the Project Coordinator in writing of the cause and the extent of the delay, whereupon the Project Coordinator shall ascertain the facts and the extent of the delay and grant an extension of time for the completion of the Consulting Services when

justified by the circumstances provided that no extension of time shall be granted which would extend the time for performance beyond the date specified in section 2.1 above.

2.3 Parties' Right to Terminate for Default. Should Consultant be in default of any covenant or condition hereof, City may immediately terminate this Agreement for cause if Consultant fails to cure the default within thirty (30) calendar days of receiving written notice of the default. Should City be in default for material breach of non-payment, Consultant may terminate this Agreement for cause if City fails to cure the default within thirty (30) calendar days of receiving written notice of the default.

2.4 City's Right to Terminate without Cause. Without limiting its rights in the event of Consultant's default, City may terminate this Agreement, without cause, by giving written notice to Consultant. Such termination shall be effective upon the expiration of the time period included in the written notice. Consultant shall be compensated for all effort and material expended on behalf of City under the terms of this Agreement, up to the effective date of termination. All personal property remaining in City facilities or on City property thirty (30) days after the expiration or termination of this Agreement shall be, at City's election, considered the property of City. During the transition period, after City provides written notice to Consultant regarding the City's intent to terminate this Agreement without cause, but prior to the effective date of termination, the Parties shall work together to complete those items of work which are in various stages of completion and which the City Manager determines are necessary to be completed by Consultant to allow the project to be completed in a timely, logical, and orderly manner.

3. PERFORMANCE AFTER TERMINATION. Upon termination of this Agreement as provided herein, Consultant shall, within such reasonable time period as may be directed by City Manager, complete all remaining items of work which are in various stages of completion and which City Manager determines are necessary to be completed by Consultant to allow the project to be completed in a timely, logical, and orderly manner. Upon termination, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, and other materials prepared by Consultant shall be delivered to the City Manager, upon his request, as property of City.

4. COMPENSATION.

4.1 Total Amount. Compensation to Consultant shall be provided in accordance with the rates described in the Cost Schedule contained in **Exhibit "B"**. Consultant shall bill the City for work provided and shall present a written request for such payment monthly. City shall pay all invoices in arrears and shall in no event be required to pay for any services provided by Consultant in advance. Consultant acknowledges that it is not guaranteed any particular amount of work.

4.2 Additional Services. City may, as the need arises or in the event of an emergency, request additional services of Consultant. Should such additional services be required, Compensation therefore shall be paid to the Consultant in accordance with Scope of Services contained in Exhibit "A." City and Consultant shall agree to the costs prior to commencement of such work.

5. INDEPENDENT CONTRACTOR. Consultant is, for all purposes arising out of this Agreement, an independent contractor. The Consultant has and shall retain the right to exercise full control and supervision of all persons assisting the Consultant in the performance of said services hereunder, the City only being concerned with the finished results of the work being performed. Neither Consultant nor Consultant's employees shall in any event be entitled to any

benefits to which City employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, Consultant being solely responsible for all such matters, as well as, compliance with social security and income tax withholding and all other regulations and laws governing such matters.

6. STATEMENT OF EXPERIENCE. Consultant agrees that it has the financial resources, service experience, completion ability, personnel, and experience in dealing with public agencies necessary for performing the Scope of Services and that such performance shall be in accordance with the standards customarily adhered to by an experienced and competent Consultant using the degree of care and skill ordinarily exercised by reputable Consultants practicing in the same field of service in the State of California. By executing this Agreement, Consultant represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to City. Additionally, Consultant and all of Consultant's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.

7. AUDIT OF RECORDS.

7.1 At any time during normal business hours and as often as may be deemed necessary, the Consultant shall make available to a representative of City for examination all of its records with respect to all matters covered by this Agreement and shall permit City to audit, examine, and/or reproduce such records. Consultant shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2 The Consultant shall include the City's right to audit under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

8. CONFIDENTIALITY. All Consulting services performed by Consultant, including, but not limited to, all drafts, data, correspondence, proposals, reports, research and estimates compiled or composed by Consultant, pursuant to this Agreement, are for the sole use of the City, its agents and employees. Neither the documents nor their contents shall be released to any third party without the prior written consent of the City. This provision does not apply to information that (a) was publicly known, or otherwise known to Consultant, at the time that it was disclosed to Consultant by the City, (b) subsequently becomes publicly known through no act or omission of Consultant or (c) otherwise becomes known to Consultant other than through disclosure by the City. Except for any subcontractors that may be allowed upon prior agreement, neither the documents nor their contents shall be released to any third party without the prior written consent of the City. The sole purpose of this section is to prevent disclosure of City's confidential and proprietary information by Consultant or subcontractors.

9. CONFLICTS OF INTEREST.

9.1 Consultant shall at all times comply with all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including, but not limited to, California Government Code §§ 81000 et seq. (Political Reform Act) and §§ 1090 et seq. Consultant shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the City in which the Consultant has a financial interest as defined in Government Code § 87103. Consultant represents that it has no knowledge of any financial interests, which would require it to disqualify itself from any matter on which it might perform services for the City.

9.2 Consultant shall comply with all of the reporting requirements of the Political Reform Act. The Consultant shall file a Fair Political Practices Commission Form 700 (Assuming Office Statement) within thirty (30) calendar days of the City's determination that the Consultant is subject to a conflict of interest code, if applicable. The Consultant shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the Consultant was subject to a conflict of interest code.

9.3 If, in performing the Consulting Services set forth in this Agreement, the Consultant makes, or participates in, a "governmental decision" as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the Consultant shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the Consultant's relevant financial interests.

10. OWNERSHIP OF DOCUMENTS. All documents, data, studies, drawings, maps, models, photographs and reports prepared by Consultant under this Agreement shall be considered the property of City. Consultant shall be permitted to reference and use said materials for use in future studies, work, and marketing so long as said materials are considered "public documents" and are not subject to attorney-client privilege, or the subject of pending closed or executive session discussions.

11. INSURANCE

11.1 Consultant shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, their agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than "A" and "VII" and are admitted to do business in the State of California, unless otherwise approved in writing by the City's Risk Manager.

11.2 Consultant's liabilities, including but not limited to Consultant's indemnity obligations, under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. All policies of insurance required hereunder must provide that the City is entitled to thirty (30) days prior written notice (ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of this Agreement.

11.3 Types and Amounts Required. Consultant shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

11.3.1 Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or equivalent providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of **\$2,000,000** per occurrence and subject to an annual aggregate of **\$4,000,000**. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy. Consultant may utilize its umbrella excess coverage to meet such requirements.

11.3.2 Commercial Automobile Liability. For all of the Consultant's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing

coverage at least as broad for bodily injury and property damage for a combined single limit of **\$1,000,000** per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

11.3.3 Workers' Compensation. For all of the Consultant's employees who are subject to this Agreement and to the extent required by applicable state or federal law, a Workers' Compensation policy providing at minimum **\$1,000,000** employers' liability coverage. The Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

11.3.4 Consulting/Professional Liability. The Consultant shall also maintain Consulting/Professional liability (errors and omissions) coverage with a limit of **\$1,000,000** per claim and **\$2,000,000** annual aggregate. The Consultant shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this Agreement whichever occurs last. The Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase the City's exposure to loss. All defense costs shall be outside the limits of the policy.

11.3.5 Cyber Liability. The Consultant shall also maintain Cyber Liability coverage on an occurrence basis with a limit of \$2,000,000 per occurrence or claim and \$2,000,000 annual aggregate. The consultant shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the Scope of Services; and (2) the policy will be maintained in force for a period of three years after substantial completion of the Scope of Services or termination of this agreement whichever occurs last. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by consultant in this agreement and shall include claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations. All defense costs shall be outside the limits of the policy.

11.3.6 Fidelity and Crime Liability. The Consultant shall also maintain Fidelity and Crime coverage for theft of City property for an amount no less than \$1,000,000 per loss.

11.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions are the responsibility of the Consultant and must be declared to and approved by the City. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers, or (2) the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11.5 Additional Required Provisions. The commercial general liability and automobile liability policies shall contain, or be endorsed to contain, the following provisions:

11.5.1 The City, its officers, officials, employees, and representatives shall be named as additional insureds. The City's Additional Insured status must be reflected on additional insured endorsement form which shall be submitted to the City.

11.5.2 The policies are primary and non-contributory to any insurance that may be carried by the City, as reflected in an endorsement which shall be submitted to the City.

11.6 Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this Section 11. The endorsement should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

12. DEFENSE AND INDEMNIFICATION.

12.1 Consultant agrees to indemnify, defend (with attorneys approved by City), and hold harmless the City, and its officers, officials, agents and employees (the "Indemnified Parties") from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the Consultant, its employees, agents, and subcontractors performance of services under this Agreement. Consultant's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the City or its elected officials, officers, agents, and employees. Consultant's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The Parties expressly agree that any payment, attorney's fees, costs or expense City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

12.2 This indemnity is in addition to any other rights or remedies which City may have under the law or this Agreement. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, City may, at its sole discretion, reserve, retain or apply any monies due to Consultant under this Agreement for the purpose of resolving such claims; provided however, that City may release such funds if Consultant provides City with reasonable assurances of protection of the City's interest. The City shall, in its sole discretion determine whether such assurances are reasonable.

12.3 Consultant agrees that its duty to defend arises upon an allegation of liability based upon the performance of services under this Agreement by Consultant, its officers, agents, representatives, employees, sub-consultants, or anyone for whom Consultant is liable and that an adjudication of Consultant's liability is not a condition precedent to Consultant's duty to defend.

13. SUBCONTRACTORS.

13.1 The Consultant's hiring or retaining of third parties (i.e. subcontractors) to perform services related to the Project is subject to prior approval by the City.

13.2 All contracts entered into between the Consultant and its subcontractor shall also provide that each subcontractor shall obtain insurance policies, which shall be kept in full force and effect during any and all work on this Project and for the duration of this Agreement. The Consultant shall require the subcontractor to maintain the same policies and coverage amounts as described in section 11 of this Agreement.

13.3 In any dispute between the Consultant and its subconsultants, the City shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend and indemnify the City as described in section 12 of this Agreement should the City be made a party to any judicial or administrative proceeding to resolve any such dispute or should the City incur any costs in responding to third-party discovery requests.

14. NON-DISCRIMINATION. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, physical or mental disability, medical condition, genetic information, marital status, military or veteran status, gender, gender identity, gender expression, sexual orientation, or any other class protected under state, federal, or local law. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to any class or category protected under state, federal, or local law and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places available to employees and applicants for employment any notices provided by City setting forth the provisions of this non-discrimination clause.

15. NOTICES. All communications to either party by the other party shall be delivered to the persons listed below. Any such written communications by mail shall be conclusively deemed to have been received by the addressee five (5) calendar days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted below.

If to City:
City of Del Mar
City Clerk
1050 Camino del Mar
Del Mar, CA 92014
Email: cityclerk@delmar.ca.us

If to Consultant:
CorVel Corporation
Attn: Legal Department
1920 Main St, Suite 900
Irvine, CA 92614
Email: Corporate_Legal@corvel.com

16 ASSIGNABILITY. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated or sub-contracted, without the express written consent of the City.

17. RESPONSIBILITY FOR EQUIPMENT. City shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Consultant or any of Consultant's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to Consultant by City. The acceptance or use of any such equipment by Consultant, Consultant's employees, or subcontractors shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify and hold harmless City from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

18. CALIFORNIA LAW; VENUE/MISC. This Agreement shall be construed and interpreted according to the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. Consultant hereby waives any and all rights it might have pursuant to California Code of Civil Procedure section 394.

19. COMPLIANCE WITH LAWS. The Consultant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to

this Agreement, including California Labor Code section 1720, et seq., relating to payment of prevailing wages for public works projects, if applicable. Consultant shall indemnify and defend the Indemnified Parties from and against any liability incurred due to any failure on the part of Consultant to comply with any applicable Laws.

To the extent Consultant is required to comply with prevailing wage requirements, Consultant does hereby acknowledge that they are aware of, have read, and understand the terms and implications of SB 854 and Consultant and any subconsultants ensure that they are familiar with and comply with its requirements. Such requirements include, but are not limited to, the registration requirement with the Department of Industrial Relations, State of California (DIR), pursuant to Labor Code section 1725.5. As of March 1, 2015, in compliance with SB 854, the City requires all affected contractors and consultants to be registered with the DIR prior to submitting a bid or proposal on any eligible District project. As of April 1, 2015, failure to comply with the requirements of SB 854 by any contractor or consultant, including registration with the DIR pursuant to Labor Code section 1725.5, shall be a material breach of this Agreement which may be terminated by the City in its sole and absolute discretion. Where applicable, this project is subject to compliance monitoring and enforcement by the DIR.

20. CONSULTANT'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986. Consultant certifies that Consultant is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC §§ 1101-1525) and has complied and will comply with these requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors, and consultants that are included in this Agreement.

21. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties with respect to the subject matters herein. There are no other understandings, terms or other agreements expressed or implied, oral or written, except as set forth herein.

22. AMENDMENTS. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless agreed to in writing by both Parties.

23. NO WAIVER. No failure of either the City or the Consultant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

24. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid, or illegal.

25. DRAFTING AMBIGUITIES. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26. LEGAL FEES. In the event of the bringing of any action or suit by either party hereto against the other party hereunder to enforce or interpret any of the provisions, covenants or conditions of this Agreement, or arising out of any tortious conduct by either party incident to

this Agreement, the prevailing party in such action or suit shall be entitled to recover all costs and expenses of suit, including reasonable attorneys' fees. In any action or suit brought to enforce this Agreement, the damages available shall be limited to specific performance or other such equitable relief that the court may order.

27. CONFLICTS BETWEEN TERMS. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

28. EXHIBITS INCORPORATED. All Exhibits referenced in this Agreement are incorporated into the Agreement by this reference.

29. SIGNING AUTHORITY. The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

30. RMIS SYSTEM AND CONSULTANT APP. Consultant shall provide City with access to its CareMC Application through the attached CareMC License Agreement and access for City's claimants to Consultant's MyCare App attached hereunder defined hereunder as **Exhibit "D"** to this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF DEL MAR,
a municipal corporation

CORVEL ENTERPRISE COMP, INC.,
a Delaware corporation

By: _____
Ashley Jones, City Manager

By: _____
Brandon O'Brien, Chief Financial Officer

Date: _____

Date: _____

ATTEST:

Sarah Krietor, Administrative Services
Manager/City Clerk

Date: _____

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney

Date: _____

EXHIBIT "A" **SCOPE OF SERVICES**

A. General Duties

CONSULTANT must perform all services required to supervise and administer a self-insured workers' compensation program for the City, and to act as either City's representative in matters relating to the City's obligations under the workers' compensation laws of the state of California.

B. Claim Files

The CONSULTANT will prepare an individual claim file based on PRISM Standards. The claim file shall be available to City representatives, claims auditors and agents for inspection, and contain all medical and factual information on each claim reported.

C. Customer Service

CONSULTANT shall provide exceptional customer service to all injured workers. CONSULTANT shall reply to all inquiries made by injured workers within one (1) business day (same day is desired) in an accurate and professional manner. The CONSULTANT shall document and respond to all complaints received from injured workers and/or Human Resources and/or Risk Management and bring about resolution of such within two (2) business days.

D. Employer Contact

CONSULTANT shall follow-up with City on all new injuries/illness within two (2) business days to initiate an initial and meaningful investigation, if required. All contacts shall be documented within the claim notes.

CONSULTANT, at the discretion of City, will provide on-site or virtual claim file reviews on a quarterly and annual basis. Other periodic on-site or virtual claim file reviews will be scheduled based upon the needs of each City.

Returned phone calls and emails to City will be accomplished no later than one (1) business day. Same day is desired.

CONSULTANT shall notify City immediately upon notice of an injured worker's hospitalization as a result of the work injury regardless of the date of injury.

E. Compensability

CONSULTANT shall first obtain authority from City to delay or deny a claim. The City's authorization shall be clearly documented in the applicable claim file or in the computer system. The compensability determination (accept claim, deny claim, or delay acceptance pending the results of additional investigation) and the reasons for such determination will be made and clearly documented in the file in compliance with PRISM Standards.

F. Medical Provider Network

At City's option, CONSULTANT shall provide a Medical Provider Network (MPN), which shall meet the State of California Laws and Regulations and the Workers' Compensation

Administrative Director requirements, per Labor Code 4616, and the needs of the City. CONSULTANT would be expected to maintain the MPN. Management of the MPN would include the dispute of medical treatment processes, as well as MPN correspondence regarding transfer of care as required.

At City's option, CONSULTANT shall incorporate City's current Medical Provider Network and Occupational Medical Providers.

G. Return-to-Work

CONSULTANT shall provide assistance to City in administering a Stay at Work/Return to Work program that is appropriate for injured employees while recovering and prior to their return to regular duties.

H. Settlements

CONSULTANT shall obtain the applicable City's authorization on all settlements. If the total incurred amount (paid and reserves amount) exceeds the applicable City's retention, the CONSULTANT should also obtain settlement authority from the excess carrier. The CONSULTANT or defense counsel shall forward settlement proposals to the applicable City in a form acceptable to the City. City will provide settlement guidelines during transition.

I. Subrogation

The CONSULTANT will pursue all subrogation involving responsible third parties and work closely with City staff to resolve subrogation issues. The CONSULTANT is not authorized to file litigation without first receiving consent from the respective City. City must approve all settlements. City may provide specific language to incorporate in any subrogation settlement. The CONSULTANT is responsible for protecting any and all statutes of limitation and must notify City in writing no later than sixty (60) calendar days prior to expiration of the statute. Either City retains the right to handle any subrogation issue it deems appropriate.

J. Litigated Cases

City responsible for approving a designated panel of attorneys to handle litigated workers' compensation matters. The CONSULTANT shall notify City of all litigation and prior to the assignment of defense counsel. The CONSULTANT shall provide City with copies of all legal correspondence and must invite City representative(s) to attend Workers Compensation Appeal Board (WCAB) hearings.

City must pre-approve all settlements or structured settlements prior to entering into any settlement discussions with claimants or applicant attorneys. City may establish a settlement process that must be adhered to. The settlement process may be a written process and if so, must be started well in advance of anticipated Mandatory Settlement Conferences or trials. City retains the right to assign potential claims to a structured settlement broker.

K. Fraudulent Claims

Citi shall be notified of all claims involving potential fraud and must authorize the CONSULTANT to initiate fraud investigation activities when such activities are determined necessary.

L. Penalties

Late payment of all benefits must include the self-imposed penalty in accordance with California law. The CONSULTANT will provide City with a quarterly listing of any administrative penalties paid in the quarters ending March 31, June 30, September 30, and December 31, which were the responsibility of the CONSULTANT, and a check from the CONSULTANT payable to the City for reimbursement. The check and report shall be submitted to the City by the 20th of the following month after the quarter ends. The CONSULTANT shall be responsible for paying all assessed penalties out of an account not associated with the respective financial account.

M. Claims and Medical Reporting

The CONSULTANT will provide monthly statistical data/reports – content to be established between the CONSULTANT and City. The CONSULTANT will provide other special reports required of the City including, but not limited to, loss trend reports, claim abstract reports, reports required by actuaries, excess insurance carriers, bill review fees, etc., provided that such reports do not require data elements that have not previously been collected by the CONSULTANT.

The CONSULTANT on behalf of each City, shall prepare and file all reports, forms and other documents in a timely manner which are now or will be required by the State of California or other governmental agencies relating to workers' compensation claims, medical payments, etc., including but not limited to the OSIP Self-Insurer's Annual Report. CONSULTANT will present all reports to City thirty (30) calendar days in advance of their due date.

The CONSULTANT will comply with the Centers for Medicare & Medicaid Services' (CMS) mandatory reporting requirements per Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA). The CONSULTANT will act as the Reporting Agent for each City.

N. Records Retention

All claim files shall be maintained in accordance with statutory time requirements and City's Record Retention Policy. If the City's Record Retention Policy requires a longer retention period than statutory requirements do, CONSULTANT shall consult with the City prior to destruction of files. City shall be notified prior to any destruction of files to determine if the City wishes to retain the claim file.

O. Availability of Staff

The CONSULTANT shall provide the same claims adjusters to handle all City claims. An assigned adjuster must have at least three (3) to five (5) years of California workers' compensation claims experience, have experience with complex City claims (including Labor Code 4850) and must be State certified to administer self-insured workers' compensation claims. If the adjuster is not certified upon hire, he/she must become certified within six (6) months.

City must approve any change of an adjuster working on their City account. Either City has the right to request a change of adjuster and be involved in the selection and/or replacement of an adjuster.

The CONSULTANT shall maintain at all times, one (1) or more of the adjusters assigned to City claims, or in their absence, the supervisor or management above the supervisory level, to be available by telephone for emergencies through a 24-hour emergency telephone number.

P. Employer Services

City requires coordination between the CONSULTANT and the Risk Management/Human Resources staff who oversee such programs as subrogation, return-to-work, Americans with Disabilities Act and CalPERS retirements. The CONSULTANT will be required to provide documentation and information as needed to the City to effectively manage these programs.

The CONSULTANT will provide an annual senior-level presentation to review/discuss the overall workers' compensation program prior to December of each year.

During the first year of the contract, the CONSULTANT manager will meet at least quarterly with each City to review the transition and ensure all aspects of the contract are appropriately implemented. Thereafter, meet as mutually agreed between the CONSULTANT and each City, but no less than twice a year.

Q. Contract Termination

In the event of termination of the contract, the CONSULTANT will furnish all claim files, computer files, and financial information at no cost to the City and at a location identified by the City. The CONSULTANT will be responsible for filing an interim annual Self-Insured Report and any other required State of California reports.

R. Right to Audit or Review

Every claim file is subject to audit by authorized City representatives at the City's expense. Notice of onsite audit by the authorized City representative will be provided prior to an audit. City retains the right to audit any of City's files within a mutually agreed timeframe, not to exceed five (5) business days.

S. Conflict of Interest

The CONSULTANT warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code Sections 1090 et seq., or Sections 87100 et seq., during the performance of services under any Agreement awarded. The CONSULTANT further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded.

T. Confidentiality

All data, documents, or other information developed or received, verbally or in writing, in performance of the agreement between the CONSULTANT and City are confidential and not to be disclosed to any person except as authorized by City, the CONSULTANT or as required by law.

It is the CONSULTANT's responsibility to develop and implement processes and procedures relating to the protection of each City's electronic data, including a suitable

security and back-up system pursuant to applicable state and federal requirements for all stored data and a written policy with respect to disaster recovery, physical and electronic data security, and electronic data retention.

U. Excess Insurance

Cases that have the potential to exceed City's self-insured retention shall be reported in accordance with the reporting criteria established by the excess insurance policies. All cases that meet the established reporting criteria are to be reported within five (5) business days of the day on which it is known the criterion is met.

V. Claim Reconciliation

All claim files shall be reconciled to ensure correct indemnity payments. The reconciliation should verify that payments were made in the correct amount and from the correct claim file. All open claim files shall be reconciled at the time of a request for settlement authorization and at the time of submission for closure. Proof of the reconciliation should remain in the claim file and clearly documented in the computer system.

W. PRISM Standards

PRISM claims administration standards and reporting and reimbursement procedures as well as their respective performance standards make up the minimum requirements and level of service to be provided by the CONSULTANT in delivering claims adjusting services and related activities to the City. A copy of the PRISM Standards is included in this Agreement as **Addendum A**. The CONSULTANT agrees to incorporate, for no additional charge, all PRISM standard updates that may occur during the contract period.

EXHIBIT "B"
COST SCHEDULE

(1) During Initial Term. Fees during the Initial Term of this Agreement shall be as follows:

Workers' Compensation Claims Administration

Description	Pricing
Life of Contract Claims Handling Fee - Per Claim	
Medical-Only	\$185.00
Indemnity	\$1,495.00
Employer's Liability	\$1,495.00
Indemnity Tail Claims	\$550.00
Medical-Only Tail Claims	\$95.00

Medical Only claims requiring the following work will be invoiced at the rates shown here. Claims previously invoiced as a Medical Only will be invoiced based on the difference between this rate and the amount previously invoiced. This increase is limited to claims with paid medical expense exceeding Five Thousand Dollars (\$5,000.00); claims requiring investigation to determine compensability, apportionment, medical causation, and subrogation; claims where medical benefits are disputed or denied, or claims where defense counsel is retained to respond to a legal proceeding or regulatory matter.

Program Management

Description	Pricing
Data Conversion - Per Data Source	Waived
Administration Fee - Per Annum ¹	\$10,000.00
Implementation Fee - One Time Fee	\$10,000.00
CareMC Access - Per Annum ²	
First 5 Full Access Users	Included
Each User over 5 - Per User, Per Year	\$1,500.00

¹ Includes Assistance with Self-Insured Data for State Reports, State Statistical Reporting & All State Filing Requirements

² Includes Executive Dashboard, Claim Details, Claims Summary Screen & Claims Reporting

Account Management and Technical Support

Description	Pricing
Account Management Staff	Included
Electronic Data Transmission - (Per Month, Based on Frequency)	
Monthly File	\$212.00
Weekly File	\$636.00
Daily File	\$2,120.00
Training – Onsite and Online	Included
Technical Support	Included
State EDI Files	Included
Monthly Reporting	Included
Ad hoc Report Programming - Per Hour	\$212.00
Communication Materials/Posters	Pass through printing cost
Annual Banking Fees	One account included
Additional Account(s) - Per Account	\$1,060.00
Carrier TPA Oversight Fees ¹	Bill from Carrier to Client

¹ Fees charged by the carrier (Oversight fees, Tail Claim transfer / takeover fees, etc.) are the responsibility of the client and will be billed directly to the client by the carrier or by CorVel should CorVel be invoiced for such fees.

Intake and Immediate Intervention Services

Description	Pricing
Claim Intake (includes one FNOL distribution) - Per Intake	\$37.00
Incident Only Reporting - Per Incident	\$37.00
Advocacy 24/7 - Per Call	\$106.00
Telehealth Services	Fee Schedule or U&C value by CPT code

Allocated Expense Fees

Legal Services

Description	Pricing
Subrogation	25% of Recoveries
Legal Bill Auditing ¹	2.5% of gross legal charges reviewed
Indexing and OFAC Compliance - Per Index	Pass through

¹ Fees will never exceed the savings generated. No mark-up on services from Bottomline.

Bill Review Services

Description	Pricing
Bill Review: Includes Standard Fee Schedule and UCR - Per Bill ^{1, 2}	\$9.50
+ Network Solutions Includes: ² Clinical Review, Implant Analysis, Line Item Bill Review, Negotiations, PPO Network Access, Substantive Denials, Technical Evaluation	27% of Savings
Minimum Transaction Fee ²	\$9.50
State EDI, Scanning/OCR, Initial 1099 Provider Notification Letter	Included

¹ Includes bill intake, document imaging, file upload, state EDI's, and initial 1099 provider notification letters.

² Minimum transaction fee (MTF) per bill transaction. Applied per transaction if all other applicable fees do not meet the minimum transaction fee. Applies to all transactions, including but not limited to, Specialty Bills, Duplicate Bills and bills sent for Re-consideration or Re-evaluation. Maximum fee per bill of \$9,000.00.

Provider and Nurse Review Services

Description	Pricing
Liability Bill Review (Reasonable and necessary and related) – Per Bill	\$21.00
Liability Nurse Review Option 1 – Per Hour	\$164.00
Option 2 – Flat Rate	\$95.00 up to 1,000 pages \$265.00 per each additional 500 pages
Peer Review / Physician Advisor – Per Hour	\$212.00
Independent Medical Reviews Chiropractic	See 2023-24 IME/Peer Fee Schedule
Orthopedic	See 2023-24 IME/Peer Fee Schedule
Neurologic	See 2023-24 IME/Peer Fee Schedule
Physical Medicine and Rehabilitation	See 2023-24 IME/Peer Fee Schedule

Patient Management

Description	Pricing
Telephonic Case Management, Field Case Management and Return to Work Coordinator - Per Hour Alaska, California, Hawaii and New York	\$164.00
All Other States ^{1, 2}	\$131.00
Vocational Rehabilitation - Per Hour ²	\$175.00

Specialty Services (Catastrophic, Life Care Plan, Medicare Conditional Payments, Medicare Set Asides, Bilingual, Critical Incident Stress Debriefing (CISD)) - Per Hour	\$218.00
Nurse Utilization Review - Per Review	\$159.00
Physician Utilization Review - Per Review	\$292.00
UR Authorization Only (Adjuster Review) - CA - Per Review	\$42.00
Care Advocate - Per Claim	\$53.00

¹ Fee applies to all States with the exception of premium states (CA, HI, AK, and NY).

¹Statutory rates supersede if applicable.

Prevailing IRS Mileage Rate applies.

Each invoice for Case Management Services shall have an additional professional service fee of \$39.00 billed to Customer.

Pharmacy Solutions

Description	Pricing
Retail Pharmacies	
Brand	AWP -17% + \$3.00 dispensing fee
Generic	AWP -45% + \$3.00 dispensing fee
Mail Order	
Brand	AWP -18% + \$2.00 dispensing fee
Generic	AWP -55% + \$2.00 dispensing fee
Clinical Modeling	
Integration of Pharmacy Data	Included
Dynamic Calculation/Display in Care ^{MC}	Included
Pharmacy Interventions	
Certified Pharmacy Technician	Included
Rx Nurse	Included
Nurse Management	Case Management hourly rate
Pharmacy Review - Per Review	\$405.00
Cognitive Behavioral Therapy - Per Hour	\$270.00
Medication Review - Per Hour	\$270.00

Ancillary Benefit Management Services

Description	Pricing
Medical Imaging Services	Varies by State and Diagnostic
Independent Medical Exam	See 2023-24 IME/Peer Fee Schedule
Physical and Occupational Therapy	Varies by State
Durable Medical Equipment	Varies by State and Equipment
IME Peer Review - Per Hour	See 2023-24 IME/Peer Fee Schedule
Transportation	Varies by State and Service
Translation	Varies by State and Service Level

Medicare Agent Reporting

Description	Pricing
Set up and engagement	\$750.00
Monthly Maintenance	\$250.00
Quarterly Reporting	Included

California Lien Program

Description	Pricing
Set up fee/minimum fee - Per Lien ¹	\$53.00
Percent of savings off Fee Schedule	20% of savings
Lien Cap	\$3,180.00
Lien Conference	\$530.00
Lien Trial	
Half Day	\$530.00
Full Day	\$795.00

DOR Filing	Included
Service and Review of Initial Discovery	Included
Litigation Review and Support - Per Hour	\$133.00

¹ Deducted from total fee if over \$100.00

State Certified Managed Care Networks

Description	Pricing
Implementation, Filing, Setup (one-time fee) ¹ Standard Network - CA MPN, TX HCN, IL PPP, KY MCO, NY Certified	\$2,650.00 per network
Standard Network - CA MPN & CA Kaiser	\$3,710.00 per network
Custom Network (CA MPN)	\$5,724.00 per network
Administration ²	CA MPN, TX HCN: +\$2.65/bill IL PPP, KY MCO, NY Certified : +\$1.35/bill All other State MCOs ¹ : Included
Optional Services (Appointment Scheduling, Training, Panel Creation, etc)	Varies by State

¹ Implementation & administration for all other MCOs (AR MCO, CT MCO, FL MCA, GA MCO, MN MCO, NE MCO, NH MCO, NJ MCO, OK CMP & WV MHCP) are included in bill review fees. Each applicable state represents a separate network.

² Additional bill fee is applied to all Bill Review transactions relating to the applicable state regardless of the bill's network utilization.

The above pricing per claim is based on handling of all claims that occur and are reported during the agreement period. Life of contract pricing is selected, claims will be handled until closed or until the end of the agreement period, whichever comes first. Pricing is valid for first year of the contract. At the end of the first year and each year thereafter, all fees outlined on the claims and managed care pricing sheet shall be subject to an increase, no greater than 5% CPI. CorVel will meet with City of Del Mar at the end of each term to establish the appropriate increase.

End of Contract Transition Fees as Pursuant to Section 8E Description Fee:

Tail Claim Transfer	\$500.00 per open claim (this is a one-time fee to transfer the tail claims, if and when they are transferred)
Annual Administration Fee	\$10,000.00 annually
CareMC Access for Tail Claims	No Charge First Five Users. Additional users beyond the first five users \$1,500.00 per user annually

(2) Fees for Additional Professional Services: If Customer requires any additional professional services from CorVel relating to the Services or the CareMC Application, including but not limited to integration of the CareMC Application with EDI or other Customer systems, Customer shall submit a written request to CorVel for such services. CorVel shall, in good faith, consider providing such services at its then-current professional services fee rate and standard terms and conditions.

(3) Billing and Payments for Case Management. CorVel will invoice Customer monthly for all fees related to Case Management Services directly to the specific claims file. Billing for Case Management is based on actual time per activity. Activity is based on ten (10) minute, a sixth (.17) of an hour, units. Time billed that exceeds the base billing unit multiple, i.e., 10 minutes, 20 minutes, etc., will be converted to the next billing unit.

EXHIBIT "C"
DESCRIPTION OF SERVICES

SCHEDULE 1
Workers' Compensation Claims Management Services
Terms and Conditions

I. DESCRIPTION OF WORKERS' COMPENSATION CLAIMS MANAGEMENT SERVICES

- (a) Customer shall promptly notify CorVel of all incidents subject to the services described in this Agreement.
- (b) First report of loss services involve gathering pertinent information related to a work injury and reporting such information to the appropriate state industrial accident board or commission as required by law, and is used to facilitate CorVel's initial review of the claim to determine whether the claim is likely to be medical-only or lost time and to help guide the initial determination of Services that may be required ("First Report Services").
- (c) CorVel's Workers' Compensation Claims Management services provide Customer with a process to comply with Customer's workers' compensation issues in the applicable jurisdiction. CorVel shall provide workers' compensation claims management services set forth herein to Customer on behalf of employees that sustain work related injuries ("Injured Employees"). CorVel may subcontract with a third party to provide some portion or all of its claims management services obligations hereunder.

II. DELIVERY OF FIRST REPORT OF LOSS SERVICES

- (a) CorVel shall provide First Report Services to Customer upon receipt by CorVel of specific requests from Customer. Prior to the implementation of CorVel First Report Services and as required during the Term of this Agreement, Customer may provide CorVel with instructions regarding the scope and extent of the First Report to be performed by CorVel. Absent such instruction, CorVel First Report Services shall be performed as described below.
- (b) Customer shall initiate First Report Services by (i) entering such information online through CareMC, (ii) calling CorVel via a toll free number provided by CorVel, or (iii) faxing such information to the CorVel intake specialist. Customer or the Customer representative entering such information on CareMC, making such calls, or faxing such information shall provide CorVel with all information required to complete the First Report of Loss form required by the applicable state ("Required Information"). Required Information generally includes the following: name/address of claimant, date of incident, description of injuries, social security number, date of birth, employer, salary, and other descriptive information reasonably required by CorVel, and may include information required by applicable statute (e.g., employer TIN). CorVel shall (i) provide sufficient staff to handle all incoming calls, and (ii) be prepared to complete First Report of Loss forms for all applicable states.
- (c) Once the Required Information is validated and confirmed by a CorVel representative, First Report of Loss forms will be made available to Customer through the CareMC Application. CorVel will, upon request of Customer, provide a hard copy of the completed First Report of Loss form to the Customer. An electronic copy shall be available to Customer via CareMC. To the extent permitted by the applicable state industrial accident board or commission, the

Required Information shall be transmitted electronically.

- (d) To the extent required by applicable statute or otherwise agreed in writing by CorVel, CorVel will file additional reports on earlier-filed First Reports of Loss ("Subsequent Reports").
- (e) Unless agreed to otherwise in writing by the parties, any questions or concerns from an industrial accident board or commission concerning First Reports of Loss forms completed by CorVel hereunder will be handled directly by CorVel. All such inquiries will receive an initial response within the next business day following CorVel's receipt of the inquiry. CorVel will keep Customer apprised of any inquiries it receives and the response thereto. CorVel will send a written response to the inquiry within five (5) business days outlining the nature of the inquiry and the resolution of same by CorVel. A copy of such response will also be sent to the attention of the designated Customer representative if requested in writing by Customer. Customer shall have the right, but not the obligation, at any time and at Customer's expense, to interject itself into the inquiry between CorVel and the industrial accident board or commission, and in connection therewith to resolve the inquiry in a manner acceptable to Customer at its sole discretion, in which case Customer shall defend, indemnify and hold harmless CorVel from and against any claim, liability, damages or costs arising from Customer's handling of such inquiry or the resolution thereof.

III. DELIVERY OF CLAIMS MANAGEMENT SERVICES

- (a) Customer shall arrange so that all claims and all related bills of any type, as well as all other correspondence that Customer receives relating to such claims, are sent directly to CorVel. CorVel shall perform all of the following "Claims Services" in connection with each portion of a Claim related to Workers' Compensation benefit payments shall be defined as:

Claims requiring work beyond the standard scope for each claim type will be invoiced at the next higher rate. The following section indicates the basis for the categorization of claims fees. You will be provided with reports that provide full transparency of the fees invoiced.

- Record Only – system notation of an event that does not require any claims handling, including contact or investigation. These are used solely for the purpose of record keeping.
- Medical Only – claims where time-off does not exceed the state waiting period and the scope of work is within the parameters noted in the Pricing section ("Fees"), Exhibit B.
- Indemnity – claims not otherwise classified as either Record Only or Medical Only.

All Claims Services provided by CorVel under this Agreement shall be performed in accordance with the guidelines set forth in Sections II-IV of this Exhibit A:

- (i) CorVel shall immediately assign each new Indemnity Claim and Medical Only Claim to CorVel's designated claims professional.
- (ii) Utilizing CorVel's CareMC Application or other applicable CorVel Online System, CorVel shall maintain a chronological record of all Claims Services performed by CorVel.
- (iii) CorVel shall make all filings related to Indemnity Claims and Medical Only Claims with the appropriate state Workers' Compensation regulatory authorities.
- (iv) CorVel shall maintain a complete and accurate claim file for each Indemnity

Claim and Medical Only Claim.

- (v) CorVel shall perform reasonable and necessary administrative and clerical work including, without limitation, the following:
 - (A) Investigate all Indemnity Claims and Medical Only Claims.
 - (B) Determine and evaluate any coverage and/or compensability issues and provide Customer with appropriate recommendations and advice regarding the same.
 - (C) Adjust, handle, or settle to a conclusion those Indemnity Claims and Medical Only Claims that CorVel believes the Customer is legally obligated to pay under applicable state law and regulations, and in accordance with the authority granted to CorVel by Customer under the Agreement.
 - (D) Prepare checks for payments of Indemnity claims, Medical Only Claims and Allocated Loss Adjustment Expenses.
 - (E) Prepare documents as necessary to close out Indemnity Claims and Medical Only Claims.
- (b) CorVel shall process claims and process the disbursement of benefit payments to claimants and providers entitled to such payments from Customer. Funding for the payment of all benefits to claimants, providers, vendors and "allocated loss adjustment expenses" (as defined below) is the sole responsibility of Customer and Customer agrees to be liable for and fund all proper claims processed by CorVel. Such payment shall be made through a bank account established by CorVel. There shall be one account established for new claims relating to both First Reports of Loss arising on July 1, 2023 and tail claims arising before August 1, 2023 (the "bank account"). CorVel shall provide Customer with a check register in a mutually agreed format for each check run drawn on a bank account prior to mailing of the checks. CorVel also will provide Customer information as necessary for Customer to prepare periodic bank account reconciliation reports. Customer agrees to pay into the bank account funds sufficient to pay approved claims and to maintain the advance deposit set forth below and to provide CorVel with such authorizations as shall be necessary to make the required instruments valid claims against Customer. Notwithstanding the other provisions of this Agreement, if payments are not made when due, Customer shall be in default and subject to immediate termination without notice, and CorVel shall have no liability for claims, penalties or other damages arising out of or relating to any such failures on the part of Customer.
 - (i) Both parties shall mutually agree to the funded amount through the special handling instructions. CorVel shall not be responsible to fund the bank account nor be responsible for any penalties, fees, costs or damages arising from the Zero funded account not being properly funded by Customer.
 - (ii) Allocated loss adjustment expenses ("ALAE") generally encompasses costs which can be directly allocated to a particular claim. As used herein, that term shall include, but not necessarily be limited to, the following: claim adjustment costs and expenses incurred by CorVel or its subcontractor and allocated by CorVel to the investigation, adjustment and settlement or defense of a claim for benefits, including, without limitation, attorneys' fees and disbursements; pre- and post- judgment interest; court reporter services and transcripts; deposition charges and transcripts; fees for

service of process or summons; court costs; courier/express mail; appeal bonds and filing fees; travel, printing costs related to trials and appeals; witness and expert fees and expense; alternate dispute resolution fees and expense; mediation fees and expense; arbitration fees and expense; ombudsman fees and expense; medical examinations and reviews to determine issues such as causal connection, length or extent of disability, degree of permanency, and other issues related to determining liability of the Customer; laboratory costs; engineering fees and expense; autopsy fees and expense; independent adjuster and private investigator fees and expense; surveillance and activity checks; photography; fees and expense related to the defense of controverted or litigated claims, including subrogation recovery; medical cost containment expense including, but not limited to, medical bill auditing expenses, hospital and other treatment utilization reviews, including precertification/preadmission and concurrent or retrospective reviews; peer reviews; preferred medical provider network or similar organization expenses; medical fee review panel expense; pharmacy benefit management expense; drug testing expense; indexing fees; expense and fees related to Medicare set aside agreements; vocational rehabilitation or return to work expense; telephonic and field medical case management expense; fees and expense for reproduction of medical and/or hospital records; fees for police reports, birth certificates, death certificates, OSHA reports and other similar regulatory authority reports; copying fees assessed by a vendor other than TPA; translation services; legal bill audit expenses; other costs and expenses reasonably incurred and related to the investigation and defense of claims or the protection and collection of subrogation rights of the Customer; and other expenses that are not defined as losses and are directly related to and directly allocated to the handling of a particular claim for services that are required to be performed by statute or regulation. Unless expressly stated as a separate fee or otherwise included within CorVel's service fees, each of the above ALAE items is subject to reimbursement at the rate charged.

- (c) CorVel shall provide Customer with payment services through Check Writing services in accordance with specifications mutually agreed by Customer and CorVel.
 - (i) The checks referred to in Section II (d) will be drawn on CorVel's account at Wells Fargo Bank, Portland, Oregon or CorVel's account at such other bank as the parties of this Agreement may mutually accept, as evidenced by a letter or written document signed by both parties (hereafter, the "Bank"), with Customer identified on each check as the insurer or any insurance carrier as such may be required. Check Writing services shall also include IRS form 1099 filing and associated follow-up, bank reconciliation, and bank fees specifically related to such processing if Customer is using CorVel's bank account. Otherwise, such services will be subject to an additional fee.
- (d) CorVel agrees to provide the following services to Customer relating to the processing and payment of claims:
 - (i) to receive claims and process payment of benefits in accordance with applicable State(s) program guidelines required for the payment of workers' compensation claims;
 - (ii) to correspond with the claimants, providers of services and vendors if additional information is deemed necessary to complete the processing of

- claims;
- (iii) to determine the amount of benefits payable;
 - (iv) to provide notice to claimants as to the reason(s) for denial of benefits (when such are denied) and to provide for the review of such denied claims;
 - (v) to receive and process for payment claims for benefits incurred prior to the Effective Date in consideration for the separate fees established in Exhibit B; and
 - (vi) at Customer's request, to provide specified additional services for such fees as the parties mutually agree;
- (e) Subject to applicable law, all claims files, data, systems and records and associated documents and notices regarding the administration of claims and provision of services pursuant to this Agreement and the payment of claims and allocated loss adjustment expenses, may be audited, examined, and copied by Customer, its representatives, excess carriers, reinsurers or any state insurance department or other regulatory body that so requires, at Customer's expense, at any time or times during CorVel's normal business hours and with not less than thirty (30) days advance notice; and notwithstanding anything to the contrary contained in this Agreement.
 - (f) CorVel is and shall remain an independent contractor with respect to the services being performed hereunder and shall not for any purpose be deemed an employee of Customer, nor shall CorVel and Customer be deemed partners, joint venturers or governed by any legal relationship other than that of independent contractor as set forth herein. CorVel does not assume any responsibility for the adequacy of the funding of benefits or any act or omission or breach of duty by Customer.
 - (g) CorVel is not in any way to be deemed an insurer, underwriter or guarantor with respect to any benefits payable under Customer's workers' compensation program.
 - (h) CorVel may rely on instructions received from such person or persons as Customer may from time to time designate in writing, provided that no such instruction may vary the terms of this Agreement.
 - (i) Unless otherwise directed by Customer or precluded by law, CorVel shall seek subrogation recoveries on behalf of Customer and shall provide Customer with any recoveries obtained, minus the attorneys' fees and costs incurred in obtaining such recoveries. Customer represents and warrants that its workers' compensation program provides for rights of subrogation. Customer delegates and/or assigns these subrogation rights and third party recovery rights to CorVel as its agent for purposes of subrogation only. Customer shall assist CorVel in its subrogation efforts by providing requested information and documentation. CorVel may engage the services of a subrogation management firm to assist with the identification and management of subrogation cases. The fees charged by the subrogation management firm will be deducted from any recovery. In those cases where the subrogation recovery efforts of the claimant's attorney should be compensated, Customer delegates to CorVel full authority to act on behalf of the Customer to negotiate reasonable attorneys' fees. In those instances where Customer's subrogation lien, in the opinion of CorVel, should be compromised or abandoned, Customer delegates to CorVel full authority to act on behalf of Customer to compromise or abandon the lien. Any determination by CorVel with respect to subrogation liens shall be final and conclusive, unless overturned by order of a limited arbitrary and capricious standard of review.

- (j) CorVel shall consult and cooperate with Customer with respect to any loss or claim resulting in a lawsuit being instituted against Customer. Nothing in this paragraph shall be construed in any way as a waiver by CorVel of any attorney/client, work product or other applicable privilege with respect to any materials or documents prepared by CorVel or its counsel in anticipation of litigation.
- (k) CorVel shall assist, cooperate and participate with Customer, carriers and reinsurers in connection with claim reviews and audits and catastrophic injury claim analysis and excess claim related reporting.

IV. SERVICE CRITERIA, STANDARDS AND GUIDELINES

- (a) Assignments: Customer will notify CorVel, either via CareMC, telephone or facsimile, that Customer's employee has sustained a work related injury. All new Lost Time claims will be acknowledged and established by CorVel within the next business day following such notice. The acknowledgement will include the name and contact information of the assigned Adjuster.
- (b) Contacts: As warranted, and always with regard to lost time, or anticipated lost time claim situations, initial contact with the injured employee will be made within the next business day following receipt of a new assignment claim. Contact with the Physician, and employer, if required will be made by the next business day.
- (c) Investigation: Completed and documented within 30 days from date of assignment.

V. INVESTIGATIVE SERVICES

- (a) CorVel shall provide investigative services ("Special Investigative Unit" ("SIU")) via an outside panel through CorVel's third party vendor providing such SIU services to include, but not limited to:
 - (i) Receipt and examination of all reports of accidents, incidents, and claims cases which are or may be the subject of such liability claims;
 - (ii) Investigation of such accidents, incidents, claims or cases where examination warrants such investigation to include on-site investigation, photographs, statements of clients, claimants and witnesses, evaluation and determination of losses, and other such investigative services necessary to determine liability and losses, but not to include extraordinary investigative services as set forth in Section b(iii) below;
 - (iii) Timely and periodic reporting to the Customer of the in-progress investigation efforts and the results of the investigations, as well as offering recommendations to the Customer of extraordinary investigative services, if required;
 - (iv) All reporting must be made via CorVel's third party vendor's proprietary portal ("Portal") for any SIU services to ensure full compliance. Customer shall direct assignment outside of Portal for any services or activities all fines or penalties for such action are the sole responsibility of the Customer.
 - (v) All compliance processes for SIU with the carrier or applicable state is completed by CorVel's third party vendor where required. If Customer directs assignment outside of CorVel's third party vendor for any compliance services or activities all fines or penalties for such action shall be the sole responsibility of the Customer.
- (b) To the extent extraordinary investigative services are required:

- (i) Customer agrees to pay the cost of all reasonable and supportable extraordinary investigative services such as, but not limited to, service performed by other adjusting and/or investigating companies, professional photographs, independent medical examinations, professional engineering services, laboratory services and legal services. CorVel shall order such extraordinary investigative services only with prior written authorization from the Customer. To the extent circumstances do not permit prior written authorization from the Customer, CorVel shall obtain verbal authorization from the Customer to proceed with the recommended extraordinary investigative services and CorVel shall promptly confirm in writing the verbal authorization provided by the Customer.

- (c) If Customer utilizes its own third party vendor or internally provides SIU Services, Customer shall be fully responsible and liable for any Losses which arise as a result of such services being provided outside of CorVel. Customer shall indemnify, defend and hold harmless CorVel from and third party claims brought against Customer from such Losses.

SCHEDULE 2
Case Management Services
Terms and Conditions

1. DESCRIPTION OF SERVICES

- (a) Case management services are provided to manage a claimant's case in order to identify the most appropriate rehabilitative treatment and/or most cost-effective health care alternatives ("Case Management Services"). Case managers may confer with the adjuster, attending physician, other medical providers, employer(s), attorney(s), the patient and the patient's family.
- (b) In certain states if requested by Customer, Case Management Services may include vocational rehabilitation services.

2. DELIVERY OF SERVICES

- (a) CorVel shall provide Case Management Services to Customer upon receipt by CorVel of specific requests from Customer as mutually agreed by both parties under the special handling instructions.
- (b) Telephonic Case Management: Telephonic case management ("TCM") includes a four-point contact with claimant, employer, claims professional and provider. CorVel case managers ("CMs") do the following: (i) facilitate communication among all appropriate parties regarding the diagnosis, prognosis and treatment plan provided by claimant's treating physician, (ii) channel or direct claimant to a PPO Network provider as appropriate, (iii) monitor and facilitate treatment planning, (iv) coordinate early return to work, and (v) subsequently provide periodic assessments of treatment and return to work plans. CMs may recommend additional services or coordinate claim closure, as appropriate.
- (c) Medical/Field Case Management: CorVel's medical/field case management ("MCM") personnel perform field based case management services as directed by the employer and/or Authorized TPA which may include on-site contact with claimant, employer, and provider, as well as telephonic communication with the claims professional. MCM's provide the CM services set forth in Section A above.
- (d) Vocational Case Management: Vocational case management services may include the following: (i) coordinating return to work, (ii) providing job analysis, (iii) assisting with job

placement, (iv) providing expert testimony, (v) assisting with job development, (vi) providing job analysis of essential and non-essential duties for employers under the American's With Disabilities Act, (vii) providing vocational testimony, (viii) providing advice regarding job seeking skills, and (ix) providing transferable skills analysis.

(e) Utilization Review:

- (i) CorVel's utilization management program reviews proposed inpatient hospital admissions and ambulatory care to determine the appropriateness, frequency, length of stay, and setting for such proposed treatment. In addition, CorVel can monitor and assess the appropriate utilization of treatment for all orthopedic and soft tissue injuries requiring ambulatory diagnostics and treatment.
- (ii) In California, certain medical diagnostics, treatments and durable medical equipment can be approved at the claims professional level. Utilizing the Adjuster Only Approval letter allows the claim specialist to expedite medically necessary care, meet California Division of Workers' Compensation (DWC) regulations and Senate Bill 1160 that requires all treatment determinations are included in a database reportable to the DWC. This process is completed by CorVel's California Utilization Management departments.
- (iii) CorVel nurses make recommendations to the claims adjuster based on nationally accepted medical guidelines, including Optimed Managed Care System, a clinical protocol software; the American College of Occupational and Environmental Medicine (ACOEM) Occupational Medicine Practice Guidelines: Evaluation and Management of Common Health Problems and Functional Recovery in Workers; other nationally accepted treatment practice guidelines, as well as any state mandated treatment guidelines.
- (iv) Any nurse recommendations for limitation or denial of care based on lack of medical necessity are reviewed by a CorVel Physician Advisor. The Physician Advisor makes a final recommendation to the claims adjuster to approve or deny. If a final recommendation is made to deny treatment, the treating physician is notified in writing of the decision and the appeals process.

(f) Critical Incident Stress Debriefing Services ("CISD"):

CorVel shall provide its Critical Incident Stress Debriefing Services ("CISD") to Customer. CISD is a core component of Critical Incident Stress Management. CISD is group and/or individual onsite or virtual meetings with employees who have witnessed or been subjected to a traumatic incident at work. CISD allows for employee ventilation, reassurance, education, continued productivity and stability. The goal of CISD is to mitigate the impact of the critical incident, accelerate employee recovery and facilitate identification of individuals who may benefit from additional services. Indicators for CISD include but are not limited to violence (burglary, assault, rape), motor vehicle accident, amputations, electrical shock, crushing injuries, machine injuries, thermal or chemical burns, witnessed fatality, weather-related incidents. Group and/or individual meetings are led by a CorVel case manager certified in CISD.

3. PROFESSIONAL FEE

- (a) CorVel's case management nurses and vocational rehabilitation counselors are required to be licensed in the jurisdictions they provide patient care or counseling. CorVel's case managers may provide care in multiple jurisdictions. Such case managers are required to maintain multiple state licenses and corresponding continuing education credits in maintaining these licenses. Additionally, CorVel's case managers are required to utilize up to date nationally recognized treatment guidelines, including American College of

Occupational and Environmental Medicine (ACOEM), Official Disability Guidelines (ODG) and the MDGuidelines. An incremental professional fee as described hereunder in Exhibit B ("Fees") shall be invoiced to Customer for the substantial costs associated with obtaining and maintaining the national guidelines for CorVel's case management nurses. Such professional fee allows CorVel to maintain the applicable licenses and certifications for CorVel's case managers as well as keeping appropriate treatment guidelines up to date.

SCHEDULE 2-A
Care Advocacy Services
Terms and Conditions

1. DESCRIPTION OF SERVICES

- (a) Care Advocate nurse service ("Care Advocate nurse") are provided following the work injury to guide the claimant's injury recovery, up to 30 days following injury. The Care Advocate nurses oversee clinical assessment of the injury severity, validate/secure medical information, act as patient advocates and sets expectations for medical care and return to work. They identify the most appropriate treatment and/or most cost-effective health care alternatives. Care Advocate nurses may confer with the adjuster, attending physician, other medical providers, employer(s), attorney(s), the patient and the patient's family.

2. DELIVERY OF SERVICES

- (a) CorVel shall provide Care Advocate Services for those cases that meet the established Care Advocate referral criteria.
- (b) Care Advocate nurse service: Care Advocate nurse service includes a three-point contact with claimant, provider and employer, or a two-point contact with claimant and provider as mutually agreed upon with the customer. Information obtained from the claimant, provider and employer will be provided to the adjuster. CorVel care advocates do the following: (i) facilitate communication among all appropriate parties regarding the diagnosis, prognosis and treatment plan provided by claimant's treating physician, (ii) channel or direct claimant to a PPO Network provider as appropriate, (iii) monitor and facilitate treatment planning, (iv) coordinate early return to work, and (v) subsequently provide periodic assessments of treatment and return to work plans up to 30 days following the work injury. Care Advocates may recommend additional services or coordinate claim closure, as appropriate.
- (c) Care Advocate nurses are responsible for completing detailed documentation within CareMC focusing on the claimant's medical condition, treatment plan and return to work status. Documentation includes but is not limited to primary injury diagnosis, comorbidities, treatment plan, medical goals, obstacles to recovery, work status and return to work.
- (d) Care Advocate nurses assess appropriate medical follow-up, work closely with the claim team to identify potential barriers to recovery that may require further follow-up or additional services and develop medical action plans to ensure timely recovery and restoration of function, advocating for the injured worker and consulting with the claim team.

SCHEDULE 3
Bill Audit, Review and Payment Services
Terms and Conditions

1. DESCRIPTION OF SERVICES

- (a) CorVel's proprietary bill review program enables an application of the appropriate Standard Fee Schedules or usual and customary values, includes PPO, Technical and Clinical Review, and CERiS, applied to provider bills.

2. DEFINITIONS

Bill (per Bill): Each transaction of a bill is considered a separate per bill count. CorVel is able to logically link transactions across logical sequences, but each is its own bill transaction.

Clean/Prepared Bill: When the provider charges are deemed to be an accurate reflection of the services rendered based on the provider's documentation. Network Solutions savings such as Clinical Review and Technical Evaluation and other review types can be applied first to the bill for the bill to qualify for the Prepared Bill status. Once at the prepared bill state Standard Fee Schedule savings can be applied.

Clinical Review: An additional level of review performed by nurses, system, or coding experts to evaluate appropriateness, relatedness of submitted charges with provided documentation.

Implant Analysis: Review of implant charges submitted to a proprietary pricing database and documentation. Implant Analysis results are included as part of Clinical Review.

Line Item Bill Review (LIBR):

Out of Network Line Item Bill Review:

- Original charge data
- U&C review by zip code
- Fee re-bundling and error removal
- Separation of charges by diagnosis/procedure
- Facility to facility cost comparison
- Individual facility chargemaster analysis and price trending

Fair and Reasonable - Universal Chargemaster: The Universal Chargemaster is a compilation of individual hospital line item descriptions from over 85% of the nation's hospitals. It is a virtual thesaurus of hospital billing terms, codes and abbreviations. Specific, unique line item descriptions are defined by the Universal Chargemaster and appropriately compared to the same service or supply for other hospitals in the same geographical area.

Minimum Transaction Fee (MTF): For each bill transaction if the fees on a bill transaction instance do not meet the minimum transaction fee amount, the difference between the fees and the min transaction fee will be automatically added to the fees.

Negotiations: A one time or ongoing agreement with the provider to accept a specific payment amount.

PPO Network Access: A preferred provider organization (PPO) is a medical care arrangement in which medical professionals and facilities provide services at a

negotiated/contracted rate. PPO medical and healthcare providers are called preferred providers.

Provider Sendback: Sendbacks occurring when a bill instance does not have enough supporting information from the provider to be a Prepared Bill. The bill is sent back to the provider requesting further information.

Standard Fee Schedule: Savings defined as the amount reduced from the Prepared Bill status to the jurisdictional state fee schedule amounts when those amounts are expressly assigned a specific value, not through reference methodologies developed by a third party or federal agency.

Substantive Denials: Sendbacks occur when a bill instance does not have enough supporting information from the provider to be a Prepared Bill. The bill is sent back to the provider requesting further information. If the provider does not provide the necessary supporting information after 90 days of the sendback status all bill savings will be considered Substantive Denial Savings and charged accordingly through an automatic bill instance. If the bill is later submitted through another bill instance with further information from the provider, another review will occur which may reverse all or part of the Substantive Denial savings and fees.

Technical Evaluation: Applicable to bills when reimbursement is not fully addressed in the jurisdictional fee schedule. State regulations may require payment to be made in accordance with payment methodologies developed by a third party (typically the Centers for Medicare and Medicaid Services (CMS)), often with exceptions or special exemptions added by the state.

UCR: "UCR" is defined as :

- Usual – A charge is considered "Usual" if it is the fee that most providers in the area charge for the same service.
- Customary – A charge is considered "Customary" if it is within the range of fees that most providers who practice in the area charge.
- Reasonable – A charge is considered "Reasonable" if it is both usual and customary or if it is justified by the Payor because of complexity. Payor, CorVel or its designees use a nationally recognized third party database for UCR charges.

In determining UCR prevailing rates, Payors, CorVel or their designees use either (a) CorVel's Enhanced Bill Review database or other nationally recognized databases to provide benchmarks for hospital charges in a hospital Health Care Provider's geographic area and (b) databases provided by FAIR Health, Inc. or other nationally recognized databases to provide benchmarks for charges by non-hospital Health Care Providers in the applicable geographic area. The UCR prevailing rate is the 80th percentile of the relevant database benchmark for the fees and charges in Provider's geographic area.

2. DELIVERY OF SERVICES

(a) Customer's Obligations

- (i) During the term of this Agreement, unless agreed to otherwise by the parties in writing, Customer shall utilize CorVel exclusively for audit, review and repricing services for Bills related to workers' compensation claims. A breach of the foregoing obligation shall constitute a material breach under this Agreement. Without limiting any other remedies available under law, a breach of the foregoing obligation with respect to PPO

(as defined in Schedule 7) Provider Bills will result in immediate termination of all PPO discounts provided by CorVel.

(b) CorVel's Obligations

- (i) CorVel shall provide Bill Review Services described herein to Customer upon receipt of specific requests from Customer. In the absence of instructions from Customer to the contrary, which CorVel must approve, Bill Review Services shall be performed as described herein.
- (ii) Bill Review Services shall be completed within a reasonable period of time of CorVel's receipt by CorVel of all necessary billing information from Customer ("Complete Billing Information").
- (iii) To facilitate timely processing CorVel shall process (A) each Provider Bill within a reasonable period of time and within industry standards after CorVel's receipt thereof, and (B) batches of Provider Bills on a daily basis or as volume dictates.
- (iv) CorVel shall process PPO Provider reimbursements on behalf of Customer industry standards from receipt of the corresponding Bill Review Audit analysis from CorVel.
- (v) CorVel will be responsible for monitoring, "flagging" and returning to Customer duplicate copies of a Bill ("Duplicates").
- (vi) Any conflicts or complaints from medical providers ("Complaints") concerning Bill Review Services completed by CorVel initially will be handled directly by CorVel. CorVel will provide an initial response to a Complaint and will send a written response to the complainant that summarizes the nature of the Complaint and the steps CorVel has taken to resolve it. Customer may be asked to interject itself into a Complaint between CorVel and a medical provider to resolve the Complaint in a manner acceptable to Customer and as needed by CorVel. Notwithstanding the foregoing, Customer shall retain full responsibility for payment of all benefits and any other expenses or services required to be paid or provided under applicable policies or state and federal workers' compensation laws.
- (vii) CorVel agrees to supply Customer in the CorVel's standard format a transmission reflecting the results of the Bill Review Services provided hereunder.

(c) Savings for the Fee schedule or usual and customary service shall be:

- (i) for states having a Standard Fee Schedule: (A) the medical provider's original bill amount; less (B) the billed amount resulting from the allowance based on specified conversion factor(s) multiplied by referenced value(s).
- (ii) for states not having a state mandated Fee Schedule: (A) the medical provider's original bill amount; less (B) the bill amount resulting from UCR.

(d) Scanning Services

- (i) CorVel will provide Scanning Services and, when appropriate, Optical Character Recognition ("OCR") Services. CorVel will timely and within industry standards, scan all bills and attached medical notes delivered to CorVel necessary for providing Bill Review services. Subject to applicable law and obtaining any required authorizations, CorVel also shall provide Scanning Services for additional claim-related documentation.
- (ii) All material scanned by CorVel hereunder shall be accessible to Customer through CareMC.

SCHEDULE 3-A
Clinical and Technical Assessment Services
Terms and Conditions

1. DESCRIPTION OF SERVICES

- (a) Clinical and Technical Assessment Services. CorVel provides this service to evaluate state specific complex rules and verify coding by providers when appropriate and supported by documentation. This can include clinical review to validate coding is correct for all applicable Provider bills, Ambulatory Surgical Center bills, and all Hospital bills (inpatient and outpatient) including:
- (i) review and analysis of codes, charges, and billing structure for incorrect coding, incorrect billing, bundling, and up-coding of procedures which affect Standard Fee Schedule values;
 - (ii) review of bills, records, and documentation by a nurse and/or by a coder;
 - (iii) separation of charges not related to the compensable injury;
 - (iv) review and apply complex state specific rules;
 - (v) application of utilization review determinations and clinical edits;
 - (vi) diagnostic related group validation (i.e., verification that the diagnostic related group billed is appropriate for the services rendered); and
 - (vii) cost shifting of revenue and CPT codes.

2. DELIVERY OF SERVICES

- (a) CorVel will timely and within industry standards, complete Review Services and return the reviewed Bills to Customer, with any adjustments to identified overcharges.
- (b) Savings for the Review Services shall be:
- (i) for states having a state mandated Standard Fee Schedule: (A) the bill amount in the Fee Schedule; less (B) the bill amount resulting from the nurse review services.
 - (ii) for states not having a state mandated Standard Fee Schedule: (A) the medical provider's original bill amount; less (B) the bill amount resulting from the nurse review services.
 - (iii) for states having a state mandated Standard Fee schedule (A) the medical provider's original bill amount; less (B) the bill amount resulting from technical review services.
 - (iv) for states not having a state mandated Standard Fee Schedule: (A) the medical provider's original bill amount; less (B) the bill amount resulting from the technical review services.
 - (v) CorVel shall pay bills on behalf of Customer for bills reviewed by CorVel in a timely manner in accordance with all state guidelines, and Customer agrees to waive any secondary third party bill reviews and/or other retrospective reviews regarding all bills for which CorVel has secured a reduction from the original billed charges.
 - (vi) If a medical provider submits an appeal, the bill will be reviewed again and, if any adjustment is necessary, CorVel will provide that information on the Explanation of Review (EOR).

SCHEDULE 3-B
CERiS
(Hospital Bill Itemization Review Services; Negotiation Services; Implant Cost Review Service)
Terms and Conditions

1. DESCRIPTION OF SERVICES

- (a) Hospital Line Itemization Review Services. (CERiS) performs its Services on Hospital Bills (inpatient and outpatient) and consist of procurement of actual bill itemization, (i) a line-by-line validation and comparison of the itemization description charges actually billed by a particular hospital to what CMS billing guidelines allow to be separately billed for in order to disallow inappropriate charges, and then will compare the valid itemization descriptions to the average itemization description charges utilized by other hospitals within a pre-designated geographic area, and (ii) a review of charges that fall outside of any pre-contracted discounts or fee schedules, and generates payment recommendations in accordance with the Customer's "Payors Allowable" language. This service does not itself include negotiation services nor Implant Cost Services.
- (b) Negotiation Services. (CERiS) will provide negotiation services with respect to all Hospital Bills (inpatient and outpatient). CorVel will contact the provider for agreement of the negotiated rate. A signed agreement regarding such rates will be maintained by CorVel. CorVel will use its commercially reasonable efforts to enter into an agreement regarding negotiated rates in accordance with a mutually agreed upon schedule.
- (c) Implant Cost Review Service. (CERiS) includes Implant Cost Review services with respect to the applicability of the Customer's "Payors Allowable" plan or policy language that specifically addresses implant payments. CorVel will identify and provide the manufacturers implant cost through its proprietary repository of national implant invoice data. CorVel then determines the recommended payment in accordance with the Customer's "Payors Allowable". In the event there is insufficient implant invoice data for the requested implant, CorVel will notify the Customer and CorVel shall not be responsible for any costs, fees, damages or penalties for any such inability of CorVel to produce a cost savings per Customer's request.

2. DELIVERY OF SERVICES

- (a) When applicable CorVel will timely within industry standards, complete CERiS Services and return the reviewed Hospital Bills to Customer, together with a written summary of any adjustments to identified overcharges.
- (b) Savings for the CERiS Services shall be:
 - (i) for states having a state mandated Fee Schedule: (A) the bill amount in the Fee Schedule; less (B) the bill amount resulting from CERiS Services.
 - (ii) for states not having a state mandated Fee Schedule: (A) the medical provider's original bill amount; less (B) the bill amount resulting from the CERiS Services.
 - (iii) CorVel shall pay bills on behalf of Customer reviewed by CorVel in a timely manner in accordance with all state guidelines, and Customer agrees to waive any secondary third party bill reviews and/or other retrospective reviews regarding all bills for which CorVel has secured a reduction from the original billed charges.
 - (iv) CorVel will identify all bills that are not eligible for CERiS Services due to: (A) compensability; (B) a pre-negotiated rate with Customer or other previously established discount; (C) services that are "review only" due to litigation or other non-payment issues; and (D) duplicate bills.

- (c) If a medical provider questions the adjustment and/or balance bills the patient, and the claim payor notifies CorVel of such communication, CorVel will provide documentation of its findings. If the hospital provides corrective or qualifying information sufficient to alter our original adjustments, CorVel will revise its report, advise the claim payor of the new, corrected adjustment. Only in the event of a successful appeal of the reduction of the bill by the medical provider shall Customer be entitled to receive a credit for the portion of the fee previously charged for the amount of the adjustment successfully appealed.

SCHEDULE 4
Preferred Provider Network Access Services (PPO)
Terms and Conditions

I. DESCRIPTION OF SERVICES

- (a) CorVel's preferred provider organization is a network of hospitals, physicians and other providers ("Participating Providers") that offer services at pre-negotiated Provider rates ("PPO Network"). CorVel also provides state certified preferred provider organization networks in states that maintain such networks.

II. DELIVERY OF SERVICES

- (a) CorVel will provide Customer with access to its PPO Network provided it is the exclusive preferred provider organization utilized by Customer. CorVel may at any time and in its sole discretion add and/or terminate any provider to or from the PPO Network.
- (b) CorVel will provide Customer with a web-based directory of its PPO Network providers.
- (c) Customer agrees that, during the Term of this Agreement Customer will not contract directly or indirectly with Participating Providers made known to Customer under this Agreement.
- (d) Customer will make reasonable effort to channel all Covered Persons to the Participating Providers as are allowed under the laws of that service area or state.

SCHEDULE 4-A
CA MPN
Custom Preferred Provider Network Access Services (Custom PPO)
Terms and Conditions

I. DESCRIPTION OF SERVICES

(a) CorVel shall assist Customer in the development and management of a preferred provider networks of hospitals, physicians and other health care providers that offer services at pre-negotiated rates for the exclusive use of Customer employees ("Custom PPO Networks"), through the following activities:

1. CorVel shall provide access to all providers within its Standard PPO Network to Customer and Customer employees as provided and described hereunder
2. If applicable, CorVel will make commercially reasonable efforts to recruit Customer nominated non-network providers into the Custom PPO Network subject to such medical professionals being credentialed by CorVel;
3. CorVel shall file with Customer's assistance with the state administrative filings for the management of the Custom PPO Network, including filing of the California MPN documents for Customer's MPN;
4. CorVel will provide the formation and management of the Custom PPO Network, including methodologies for provider network inclusion, suspension and termination provisions consistent with all applicable laws in the relevant jurisdiction.

Customer shall be responsible for all Customer Custom PPO Network determinations, including which providers should be included or excluded from its preferred provider network. Customer is also responsible for notifying CorVel which providers should be suspended or terminated from its own preferred provider network consistent with all applicable laws in the relevant jurisdiction and pursuant to CorVel's Quality Assurance policies and procedures.

II. DELIVERY OF SERVICES

(a) CorVel shall provide Customer with access to each Custom PPO Network provided it is the exclusive preferred provider organization utilized by Customer for workers' compensation, auto liability, and general liability claimants. CorVel may at any time and in its sole discretion terminate any provider to or from the Custom PPO Network(s).

(b) Customer agrees that, during the Term of this Agreement and for (12) twelve month period thereafter, Customer will not contract directly or indirectly with Participating Providers made known to Customer under this Agreement.

(c) Customer will make reasonable efforts to channel all Covered Persons to the Participating Providers as are allowed under the laws of that service area or state.

(d) Savings for each Custom PPO Network shall be:

(i) for non-fee schedule negotiated contracts: (A) the medical provider's original bill amount; less (B) the bill amount resulting from the contract rate.

(ii) for fee schedule negotiated contracts; (A) the fee schedule amount less (B) the bill amount resulting from the contract rate.

SCHEDULE 5 CAREIQ Services Terms and Conditions

I. DESCRIPTION OF SERVICES

CareIQ is CorVel Nationwide Ancillary Benefit Management Program. CareIQ's network is comprised of direct provider contracts, affiliate networks and national vendor agreements. CareIQ is responsible to pay rendering providers timely for covered and approved services performed.

The CareIQ Ancillary Benefit Management Program includes; referral management and coordination, billing and invoicing, credentialed provider network management, and/or clinical oversight of treatment.

Services Included; Durable Medical Equipment, Home Healthcare, Transportation, Interpretation, Imaging and Diagnostics, Independent Medical Examinations, Age of Injury Determinations, Physical Therapy, Occupational Therapy, and other Rehabilitation and Ancillary Healthcare services.

II. PAYMENT FOR CAREIQ SERVICES

CorVel shall invoice and bill the CareIQ Services directly to the specific claims file. CorVel reserves the right to increase and amend the rates set forth herein by notifying Customer of such amendment in writing, and Customer shall, if such amendment is unacceptable, have thirty (30) days from the date said notice is received to reject such amendment by delivery of written notice of rejection to CorVel. If CorVel does not receive such notice of termination within such thirty (30) day period, the amendment to the rates shall be deemed accepted by Customer and this Agreement shall continue in full force and effect, as so amended.

SCHEDULE 6
Pharmacy Benefit Program
Terms and Conditions

I. DESCRIPTION OF SERVICES.

- (a) CorVel shall be the exclusive provider of a Pharmacy Program inclusive of a PBM and a Provider Network representing Participating Pharmacy Providers that are obligated upon and after identification of a participant within CorVel's PBM to:
 - i. Accept a contracted rate, and
 - ii. Apply mandated processes and CorVel's Formulary and Concurrent Drug Utilization Review program at point-of-service before dispensing prescribed medications.

II. DEFINITIONS.

- (a) "AWP" shall mean the Average Wholesale Price for a Brand or Generic Drug Product. CorVel bases Customer pricing off of the reported AWP value from Medi-Span and the date of service.
- (b) "AWP Discount" shall mean the PBM discounts CorVel applies, per Customer's negotiated rates, to Covered Brand and Generic Drug Products, Compound Drugs and Specialty Meds.
- (c) "Brand Drug" shall mean a Covered Drug defined as a brand name drug in PBM proprietary Generic Code Conversion ("GCC") logic.
- (d) "Compound Drugs" shall be systematically identified when processing through the PBM via the Formulary. Drug compounding is often regarded as the process of combining, mixing, or altering ingredients to create a medication tailored to the needs of an individual patient. Compounding includes the combining of two or more drugs. Compounded drugs are not FDA-approved.
- (e) "Concurrent Drug Utilization Review" ("DUR") shall mean the algorithm systematically applied at a Participating Pharmacy before dispensing that considers the Presenting Drug's safety and efficacy in context with other drugs that have been dispensed. In addition, the algorithm includes applicable protocols and guidelines based on the Presenting Drug and specific claim history, such as the time period from the last fill of the same Drug.
- (f) "First Fill" shall mean a prescription filled by a Participating Pharmacy for a limited supply of Covered Drugs for a claim that is not, at the time, eligible. First Fill transactions follow CorVel's First Fill Formulary. The First Fill Formulary is for the immediate treatment of injuries, including common exposure drugs/vaccines. The pharmacy is instructed to fill any formulary prescription written by the treating physician, whether or not the claim is accepted as a workers' compensation claim. Most claims are ultimately accepted.
- (g) "Formulary" shall mean CorVel's Workers' Compensation Standard or state specific drug/drug class and brand/generic specific triggers systematically applied at a Participating Pharmacy before dispensing a Presenting Drug that prompts the pharmacy through its adjudication system to either: dispense the Presenting Drug, convert from brand to generic, attain approval to dispense,.

- (h) "Generic Drug" shall mean a Covered Drug, whether identified by its chemical, proprietary, or non-proprietary name, that (i) is accepted by the FDA as therapeutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient; and (ii) defined as a generic drug in PBM proprietary Generic Code Conversion ("GCC") logic. In the adjudication process, CorVel applies Customer's negotiated Generic Drug discount rate to the AWP value of Covered Generic Drugs.
- (i) "GCC" refers to PBM proprietary Generic Code Conversion logic. GCC logic converts Medi-Span codes to the brand and generic codes used for claims adjudication.
- (j) "Good Samaritan (Emergency) Fill" shall mean a limited supply of Covered Drugs that are outside of the Formulary and typically dispensed outside of normal business hours (overnight, weekends or holidays) by a Participating Pharmacy without Customer's or CorVel's approval in order to meet, in the pharmacist's professional judgment, an immediate or urgent need. Customer is responsible for payment of drug charges processed through Good Samaritan Fills; CorVel assumes no liability.
- (k) "Mail Order Program" or "Home Deliver Program" shall mean the managed program from which Covered Drugs are dispensed and billed through CorVel's PBM. A pharmacy's status as a mail order pharmacy does not indicate participation in the CorVel PBM Mail Order Program. Mail Order participation is limited to designated pharmacies operating within the strict parameters of CorVel's Mail Order Program.
- (l) "Multi Source Brand" shall mean a Covered Drug specified as a brand name drug available from more than one manufacturer as determined by CorVel primarily using a combination of data fields provided to CorVel by Medi-Span (or another nationally available reporting source that may be selected by CorVel). Multi Source Brand Drugs are eligible for conversions to Generic Drugs at the Participating Pharmacy.
- (m) "Multi Source Generic" shall mean a Covered Drug specified as a multi source generic drug as determined by CorVel primarily using a combination of data fields provided to CorVel by Medi-Span (or another nationally available reporting source that may be selected by CorVel). Generic Drugs in their six month exclusivity period or limited supply drugs may be excluded from Multi Source Generic Drugs.
- (n) "PBM" shall mean Pharmacy Benefits Manager. CorVel performs as the PBM on behalf of its Customers.
- (o) "Presenting Drug" shall mean the drug ordered by the prescriber and presented on a signed prescription to a Participating Pharmacy and processed through CorVel's PBM.
- (p) "Rate application exceptions," per Billing and Payments of Pharmacy Program (below) sections (d) and (e), apply when either State Fee Schedule AWP Values or Customer's Negotiated PBM AWP Discount rates are lower than CorVel's Acquisition Price. CorVel's Acquisition Price reflects CorVel's cost of the Covered Drug plus a processing and management fee.
- (q) "Single Source Brand" shall mean a Covered Drug specified as a brand name drug available from only one manufacturer as determined by CorVel primarily using a combination of data fields provided to CorVel by Medi-Span (or another nationally available reporting source that may be selected by CorVel). Single Source Brand Drugs are not eligible for conversions to Generic Drugs.

- (r) "Single Source Generic" shall mean a Covered Drug as determined by CorVel that may not have been purchased by pharmacies at standard Multi Source Generic Drug rates because of limited manufacturers, limited supply or exclusivity rights. In the adjudication process, Customer's Brand Drug AWP Discount value may be applied to Single Source Generic Drugs.
- (s) "Specialty Medications" shall mean certain pharmaceuticals, biotech or biological drugs, that are Covered Drugs used in the management of chronic or genetic disease, including but not limited to, injectable, infused, or oral medications, or products that otherwise require special handling. In the adjudication process, Customer's Claims Professional's approval is required, and Customer's Brand Drug AWP Discount value and dispensing fee may be applied irrespective of the Presenting Drug's GCC (Generic Code Conversion) status.

III. DELIVERY OF SERVICES.

- (a) CorVel shall provide its Pharmacy Program's PBM and Network for the benefit of Customer.

- (b) Eligibility, First Fill, Pharmacy Identification (ID) Cards, and Mail Order/Home Delivery.

Pharmacy ID cards contain the necessary data elements to enable a Participating Pharmacy provider to electronically process through and transmit claim data to CorVel's PBM. The electronic transmission that occurs at the point of sale is required for application of Formulary, Concurrent Drug Utilization Review and contractual pricing.

- i. Customer agrees to promptly provide CorVel all information needed to produce and distribute Pharmacy ID cards to Eligible Claimants. Subject to applicable law, Customer will instruct Eligible Claimants to use the Pharmacy ID cards at participating network providers in order to facilitate the Pharmacy Program.
 - ii. Distribution of Pharmacy ID cards does not guarantee that Pharmacy ID cards will be appropriately utilized by Eligible Claimants or Participating Pharmacies; therefore, Customer understands that claims assigned by Pharmacies to third party billers or paper bills submitted by the Pharmacies are not adjudicated through the prospective PBM.
 - iii. CorVel, agrees to produce and distribute Pharmacy ID cards to Eligible Claimants upon receipt of all necessary Eligible Claimant information from Customer. CorVel will also send an introduction letter to the Eligible Claimant along with the Pharmacy ID card.
 - iv. CorVel will provide access for Eligible Claimants to the PBM Mail Order Program. CorVel will work with Customer to establish the parameters of the Mail Order Program and the process which will be utilized to encourage Eligible Claimant use of the Mail Order Program.
- (c) CorVel's PBM will present a proprietary or state mandated Formulary to Customer. Upon presentation of identification to a Participating Pharmacy, the Formulary will trigger the Participating Pharmacy's adjudication system to either:
 - i. Automatically dispense certain medications, or
 - Obtain Prior Authorization (PA) approval from claims professional to dispense,
 - (d) CorVel's PBM will implement a Concurrent Drug Utilization Review ("DUR") program on behalf of Customer, Concurrent DUR includes a review of the drug history at the time the

prescription is presented. Absent Customer's directions, DUR shall be performed in accordance with CorVel's PBM's standard service model.

IV. BILLING AND PAYMENTS OF PHARMACY PROGRAM.

(i) Financial obligations of parties.

(i) Customer shall be financially responsible for all drug charges incurred by claimants for dispensed medications processed under CorVel's PBM. CorVel assumes no liability for drug charges with the exceptions noted below in subsection iii.

(ii) If the CorVel claims professional determines, upon receipt of CorVel's PBM invoice, that specific formulary and non-formulary drugs should not have been dispensed, the CorVel claims professional should inform the PBM as soon as possible.

1. The PBM will request a reversal from the Participating Pharmacy. If granted, CorVel will reverse the drug charges, however, if the Pharmacy does not grant the PBM's request, Customer is responsible for payment of the drug charges; CorVel assumes no liability for drug charges with the exceptions noted below in subsection iii.

(iii) Upon receipt of an invoice, CorVel claims professional may timely dispute charges for drugs that were dispensed in error, triggering CorVel's PBM to reverse the drug charges, by notifying CorVel for any of the following reasons:

1. CorVel's PBM and/or the Participating Pharmacy's violation of Formulary or Utilization Review Parameters set forth in Customer's DUR program, or in the Claimant Level Formulary; or
2. Duplicate or inadvertent entries or other clerical mistakes on a PBM invoice.

(ii) Invoicing and Payment.

On a per Covered Drug basis CorVel will apply daily for all drug charges and fees related to the PBM directly to the claim file.

CorVel shall invoice and bill directly all prescription fees to the specific claims file.

CorVel uses Medi-Span as our AWP data source. CorVel's Medi-Span database is updated daily and AWP values are applied on the date of dispense.

In all states with the exception of California, Customer will be billed the lesser of the state fee schedule AWP or the CorVel's negotiated rate.

(iii) Both parties understand that pricing indices historically used (including under this Agreement) for determining the financial components of pharmacy billing rates are outside the control of CorVel and Customer. The parties also understand there are extra-market industry, legal, governmental and regulatory activities which may lead to changes relating to, or elimination of, these pricing indices that could alter the financial positions and expectations of both parties as intended under this Agreement.

Both parties agree that, upon entering into this Agreement and thereafter, their mutual intent has been and is to maintain pricing neutrality as intended and not to benefit one party to the detriment of the other. Accordingly, to preserve this mutual intent, if pricing neutrality does change and CorVel undertakes any or all of the following:

- (i) Changes the AWP source, or other source if AWP is not applicable, across its book of business (e.g., from Medi-Span to First Databank); or
- (ii) Maintains AWP, or other source if AWP is not applicable, as the pricing index with an appropriate adjustment in the event the AWP, or other, methodology and/or its calculation is changed, whether by the existing or alternative sources; or
- (iii) Transitions the pricing index from AWP, or other source if AWP is not applicable, to another index or benchmark (e.g., to Wholesale Acquisition Cost);

Customer's negotiated PBM pricing will be modified as reasonably and equitably necessary to maintain the pricing intent under this Agreement.

V. California Modification

On April 15, 2016, the State of California Department of Industry Relations applied the new Federal Upper Limit (FUL) index to the California Pharmacy Workers' Compensation Fee Schedule. The new FUL index has resulted in a need for CorVel to modify our current pricing structure based on the fee schedule changes and our contract language.

The FUL's impact and the modification is limited to generic drugs; brand drug pricing will not change. As per our contract, the modification will maintain "pricing neutrality" between both parties.

SCHEDULE 7 **Peer Review/Medical Records Review Program** **Terms and Conditions**

I. DESCRIPTION OF SERVICES.

- (a) CorVel shall provide access, and deliver the services described in this Schedule 7 in connection with such access, to a panel of medical professionals who have been credentialed by CorVel as "Credentialed Providers" and who will perform Peer Review ("Peer Reviews") and Medical Record Reviews ("MRRs").
- (b) Peer Review/Medical Records Review is defined as the process of reviewing and commenting on the work, decisions and/or recommendations by one's equal (peer) to ensure that it meets specific criteria such as federal and state regulations, and nationally accepted standards of care in rendering medical services.

II. DELIVERY OF SERVICES.

- (a) CorVel shall work only with Credentialed Providers under this Agreement. "Credentialed Providers" are medical professionals with respect to whom CorVel has performed its standard credentialing process. CorVel shall also verify that the medical professionals who are Credentialed Providers meet all applicable statutory and/or legal requirements regarding who can conduct a Peer Review or MRR.
- (b) Customer shall have the right to nominate medical professionals as candidates for addition to the panel of Credentialed Providers provided by CorVel for access by Customer ("Credentialed Panel"), subject to such medical professionals being credentialed by CorVel as Credentialed Providers.
- (c) Customer shall have the right, with written notice to CorVel, to request that CorVel cease using a specific medical professional from the Credentialed Panel for Customer's claimants. Upon receipt of such notice from Customer, Supplier shall promptly cease using the specified medical professional as requested by Customer in such notice.

- (d) Customer may submit a request for a Peer Review or a MRR via phone, fax, or electronically via CorVel's CareMC website, if applicable.
- (e) CorVel shall ensure that the MRR is assigned to a provider within 2 business days of receipt of request or in accordance with applicable State law.
- (f) CorVel will copy required medical records for the Peer Review or MRR as provided by the Customer's file handler or legal office. CorVel will obtain additional medical records as requested.
- (g) CorVel shall deliver to Customer completed Peer Review and MRR reports within 7 business days of assignment to the Credentialed Provider. Prior to such delivery to Customer, CorVel shall complete its quality review of such report.
- (h) CorVel shall provide Customer quarterly activity reports within twenty (20) business days following the applicable quarter.

SCHEDULE 8-A
Medicare Set-Aside Services
Terms and Conditions

I. DESCRIPTION OF OTHER SERVICES

a. Medicare Set-Asides: CorVel provides an extensive review of medical records and medical bills, producing a comprehensive report and cost projection outlining future Medicare eligible costs in anticipation of settling out future medical care on a Customer's employee or insured individual. Costs are determined through CorVel's proprietary Bill Review system as well as utilization of the online Red Book™ access for medication costs. Red Book™ is the accepted authority by CMS for pricing on all medications.

b. Life Care Plans/Future Cost Projections: Life Care Plans/Future Cost Projections are a plan for optimal utilization of health care dollars that document objective view of the future health needs, services and related costs. It provides for comprehensive reports summarizing medical treatment and care and outlining life time needs for a Customer's employee or injured individual when they are catastrophically injured. Life Care Plans/Future Cost Projections are also used both for litigious settlements as well as projecting reserves setting.

c. Medicare Conditional Payment Resolution: CorVel's service includes securing Medicare Conditional Payment letters and disputing the Medicare Conditional Payments unrelated to the claim. CorVel communicates directly with the Medicare contractors, the CRC (Commercial Repayment Center) or BCRC (Benefits Coordination & Recovery Center) to resolve the Medicare Conditional Payment debt.

II. DELIVERY OF SERVICES OF MEDICARE SET ASIDES

a. Customer/Carrier shall provide the CorVel Medicare Set-Aside Hub office with a copy of the first report of injury, most recent two years of medical records and medical bills including indemnity payout, all operative reports, IMEs/AMEs as well as orders rendered by the workers' compensation judicial system. Appropriate releases for completion of request for service will be forwarded either to the Customer or, at the Customer's request, directly to counsel representing the injured worker to obtain the injured worker's signature.

b. Customer may submit a request for a Medicare Set-Aside via email, phone, fax, or electronically via CorVel's CareMC website, if applicable.

c. A certified Medicare Consultant ("Consultant") will review the medical records and bill summary, prepare a detailed summary of the records and a projection for future medical expense which are Medicare eligible. If requested, the Consultant will also provide a projection of those costs which are not Medicare eligible in order to provide the customer with their total medical exposure.

d. The Consultant will return the completed Medicare Set-Aside report to the Customer within fifteen (15) business days of receiving all relevant medical records and related information. If a rated age is warranted, the Consultant will acquire same. If the Medicare status of injured party is unknown or unclear, a request for Medicare status will be submitted to the Social Security Administration. Once the Medicare status is known, the Coordination of Benefits Contractor will be notified and conditional payments requested.

e. Upon Customer's request, CorVel Medicare Set-Aside Hub office will submit through the web-portal all required documents to enable CMS to review and approve the proposal. Items submitted include the Medicare Set-Aside report, the tentative settlement amount, along with other required documentation, to the Centers for Medicare & Medicaid Services (CMS). Upon receipt, CorVel Medicare Set-Aside Hub office will forward the CMS Determination letter to the Customer. Final executed settlement documents (reflecting CMS recommended Medicare Set-Aside amount) will be provided to CorVel Medicare Set-Aside Hub by the Customer/counsel and then forwarded by CorVel to CMS through the web-portal.

f. Upon request from Customer, CorVel shall provide Customer quarterly activity report within twenty (20) business days following the applicable quarter.

III. DELIVERY OF SERVICES OF LIFE CARE PLANS/FUTURE COST PROJECTIONS

- a. Customer shall provide all available medical records and billing to CorVel Medicare Set-Aside Hub office as well as any other pertinent records for initial review.
- b. For a Life Care Plan, a visit to the residence of the Customer's employee or injured individual with interview of claimant and family will be conducted after permission is acquired by the Customer. The interview will include evaluation of the home setting, extensive information gathering, and pictures of the various equipment and housing structures.
- c. Letters will be sent to all treating physicians to obtain their opinions on future medical treatments including medications and therapies for the claimant. The physician's opinions will be included as recommendations within the Life Care Plan summaries.
- d. Future cost projections are utilized to immediately set reserves for future medical needs regarding catastrophic or major injuries. Home visits are not conducted for a future cost projection.
- e. Customer may submit a request for a life care plan or future cost projection via email, phone, fax, or electronically via CorVel's CareMC website, if applicable.

SCHEDULE 8-B
Medicare Agent Services – Managed Care Customer
Liability Claims
Terms and Conditions

I. DESCRIPTION OF OTHER SERVICES

In order to assist Customer, as a Responsible Reporting Entity ("RRE"), in complying with the mandatory quarterly electronic reporting requirements issued by the Centers for Medicare/Medicaid Services ("CMS") under the Medicare/Medicaid and S-CHIP Extension Act of 2007, Section 111 (the "Act") regarding certain injured parties who are Medicare Beneficiaries, CorVel provides Medicare Agent services as described below subject to the provisions of the final regulations to be issued by CMS.

II. DESCRIPTION OF MEDICARE AGENT SERVICES

- (a) Upon designation as Customer's Medicare Agent, CorVel shall provide Customer assistance with Customer's registration as a Responsible Reporting Entity ("RRE").
- (b) CorVel and Customer will establish a manual interface to facilitate the exchange of specific claims data required to be reported to CMS under the Act; thereafter, as Customer's designated Medicare Agent, CorVel will initiate a test file interface with CMS within the statutory timeframes required by CMS under the Act.
- (c) Upon successful completion of the test file interface, CorVel will commence an ongoing monthly query process on behalf of Customer where CorVel will transmit through the CMS Query Tool certain basic claims data elements (claimant name, social security number, date of birth and gender) on the liability claims the Customer provides to CorVel via the manual interface, for CMS to determine if such claim data elements match a valid CMS record indicating Medicare eligibility. CorVel will report the results of such query on CareMC and in a Monthly Eligibility Query report for Customer to review. In the event the Medicare Reporting Queue determines any such liability claim is invalid due to an error or missing information, then Customer shall be responsible for reviewing, researching and correcting such claims data from the Monthly Eligibility Query report supplied by CorVel to the Customer, for resubmission by CorVel through the CMS Query Tool on the next monthly query process transmission; provided, however, if Customer so requests, CorVel will provide such research regarding Medicare eligibility at an additional hourly rate and such research shall include claimant's name, social security number, date of birth, gender and any other required data field.
- (d) Once it is determined through the Medicare Reporting Queue that a liability claimant is Medicare eligible, the Customer will provide CorVel through the manual interface all data elements necessary to commence the transmission of mandatory quarterly electronic claims reporting of those liability claimants to the CMS Benefits Coordination & Recovery Center (BCRC) on Customer's behalf within the specific 7-day reporting period assigned to Customer by CMS. A copy of the initial report shall also be posted by CorVel on CareMC for Customer to review. The BCRC will confirm either acceptance of the Medicare eligible claims thus reported or return any files for which data is missing or incorrect. CorVel shall post on CareMC and provide Quarterly Claim Submission reports to the Customer with any error reports from the BCRC showing such files containing missing or incorrect data for Customer to research and correct by the manual interface to CorVel. Once corrected, CorVel will enter the data and resubmit such files to the BCRC during the next quarterly reporting file.
- (e) CorVel, as Customer's designated Medicare Agent, will continue to electronically transmit to the BCRC on a quarterly basis all new and updated liability claims provided by the Customer to CorVel through the manual interface, identified through the Medicare Reporting Queue and the Customer provided CorVel the necessary data to report the Customer's Medicare eligible claims.
- (f) CorVel, as Customer's designated Medicare Agent, will also electronically transmit

to the BCRC any monetary settlement data received by the Customer to CorVel through the manual interface on Customer's Medicare eligible claims.

- (g) CorVel shall provide Customer quarterly activity reports within twenty (20) business days following the applicable quarter.

III. LIMITATION OF LIABILITY REGARDING MEDICARE AGENT SERVICES

In order to assist Customer, as a Responsible Reporting Entity ("RRE"), in complying with the mandatory quarterly electronic reporting requirements issued by the Centers for Medicare/Medicaid Services ("CMS") under the Medicare/Medicaid and S-CHIP Extension Act of 2007, Section 111 (the "Act") regarding certain injured parties who are Medicare Beneficiaries, CorVel agrees to provide Medicare Agent services as described in Schedule 2 attached hereto subject to the provisions of the final regulations to be issued by CMS, including information relating to such claimant, and the establishment and maintenance of an electronic data interface with CMS's computer system to the extent required by law and within the time period required by CMS so as to avoid the incurrence of penalties and fines ("RRE Reporting Obligations").

- (a) In order for Customer to meet its RRE Reporting Obligations, Customer shall promptly review the results of the Medicare Reporting Queue, research any errors or missing data and resubmit such corrected or missing data promptly to CorVel within the applicable timeframes so that CorVel can timely report such corrected or missing data to CMS.
- (b) In the event that information supplied by Customer to CorVel is incorrect, incomplete or untimely delivered and prevents CorVel from completing a timely transmission to CMS, or leads to errors in transmissions to CMS, Customer shall be solely responsible for promptly resubmitting corrected data to CorVel, and CorVel will not be liable for any damages, fines, penalties or other amounts to the extent arising from such incorrect, incomplete or untimely delivered information. CorVel shall notify Customer via a posting on CareMC and the Quarterly Claim Submission report if CorVel receives notice from CMS that a transmission submitted by CorVel on behalf of Customer as an RRE contains incorrect, incomplete or untimely delivered information. The Customer shall correct errors necessary to complete successful transmission to CMS.
- (c) Customer shall release CorVel from any and all penalties or other fines imposed by CMS and its related governmental agencies, in the event information supplied by Customer to CorVel is incorrect, incomplete or untimely delivered and prevents CorVel from submitting a report to CMS or leads to errors in submissions to CMS.

SCHEDULE 9

Clearinghouse Payer Agent Services Program

Terms and Conditions

1. DESCRIPTION OF SERVICES

- (a) Clearinghouse Payer Agent Services: CorVel shall act as Customer's agent under this Agreement. CorVel's clearinghouse receives bills from health care providers in electronic form, verifies the data integrity of the information on the bills, and routes directly to CorVel's Bill Review system for completion of CorVel's Bill Review service. Explanation of Benefit (EOR) information will be transmitted to providers from CorVel in the ANSI 835 format. CorVel will send 835 data to health care providers via its clearinghouse upon CorVel's completion and approval of all Explanation of Reviews (EOR's) via CorVel's Bill Review service in compliance with the local governing state laws and regulations.

- (b) Compliance with applicable law: CorVel shall ensure that Clearinghouse Services are provided in compliance with the applicable laws, statutes, rules and regulations of the state service shall be provided in. Customer agrees to timely provide to CorVel information and assistance requested by CorVel and reasonably required to ensure such compliance.

2. SETUP AND DELIVERY OF SERVICES

- (a) Routing Directly to Bill Review: A test sample of Customer's bills will be pulled from the clearinghouse test system and imported to the bill Review test system. Bill Review results will be output to Customer through the existing format. Routing bills through CorVel's Test bill review system may require three to four weeks. CorVel will make reasonable efforts to begin testing within five business days of the request for services.

3. PRICING STRUCTURE

The cost of Clearinghouse Payer Agent Services is as follows:

- For customers for whom CorVel provides bill review services – No additional charge

SCHEDULE 10 **Advocacy 24/7 Nurse Triage Services** **Terms and Conditions**

CorVel shall provide to Customer the following Services related to Nursing Coordination of Care Services:

- Answer calls received 24 hours a day/7 days per week on CorVel maintained Customer triage telephone line.
- Instruct the caller / injured employee on first aid and or initial injury treatment.
- Facilitate assessment at a designated outpatient clinic or emergency room as needed.
- Follow up with the injured employee within 24 hours of initial report to evaluate current condition.
- Document all calls and communicate to appropriate parties.

An incident shall encompass

- The nurse receipt of the initial call,
- The gathering of necessary information and distribution of said information to the appropriate parties, and
- One clinical follow-up to the injured employee in the first 24 hours following the initial call.

SCHEDULE 11 **Medication Review Services** **Terms and Conditions**

I. DESCRIPTION OF SERVICES.

- (a) CorVel acknowledges there is a subset of patients in the system that do not improve despite extensive diagnostic testing and numerous treatments. CorVel knows these relatively fewer cases drive a disproportionate amount of costs. Interestingly, these "creeping catastrophic" claims often present as a simple strain or sprain injury or diffuse spinal pain. There is ample data to suggest that bio-psychosocial factors can amplify,

sustain or mitigate a patient's perception of disability in these cases. CorVel shall use clinical modeling to identify those patients at risk for delayed recovery and apply an interdisciplinary bio-psychosocial approach to their care.

- (b) CorVel offers a variety of interventions that are recommended depending on the severity and chronicity of the claim. They can be utilized separately or integrated in a more comprehensive management plan again depending on claim severity and patient characteristics.

II. DELIVERY OF SERVICES.

Medication Review:

- CorVel's contracted physician will evaluate the medical necessity of each currently used or prescribed medication.
- CorVel's contracted physician will recommend elimination of duplicative medications.
- CorVel's contracted physician will determine and recommend medications that may replace and be equally or more effective than one or a group of currently used/prescribed medications.
- CorVel's contracted physician will recommend medications that are pharmacologically similar to currently used or prescribed medications when available at a lower cost (same or similar class, less cost, generic when available).
- CorVel's contracted physician will attempt Peer to Peer contact by calling the PTP.
- CorVel's contracted physician will provide the customer a written agreement from the prescribing physician (if agreement is reached) for alternate treatment plan.
- On cases where agreement is not met between CorVel and the PTP a written report will be generated and sent to the customer that includes a written summary of all activity that will include recommendations, rationales and potential savings identification made by CorVel's contracted physician.
- Allowances will be made for the attending physician to bill for their time spent on the teleconference at the applicable fee schedule.

Wellness Program:

Cases can be initially referred to a network of cognitive behavioral therapists who function to help the patient/claimant improve their pain coping skills, change their perception of disability and decrease fear-avoidance behaviors that are often a significant barrier for RTW.

SCHEDULE 12 TeleHealth Services Terms and Conditions

CorVel shall provide TeleMedicine visits to Customer's injured employees who opt for such service for as level of care determinations are made through our 24/7 nurse triage hotline. A TeleMedicine visit is a single synchronous virtual consultation through CorVel's third party vendor platform between a Qualified Professional and a claimant ("TeleMedicine").

CorVel's 24/7 triage nurses are trained to provide an initial assessment and will provide immediate referral to medical care when needed. Nurses may refer to TeleMedicine as appropriate (i.e., musculo-skeletal injuries).

- TeleMedicine virtual visits are always an "option" for the injured employee.
- If opted by the injured employee, CorVel connects the injured employee to a physician immediately via a computer, tablet or phone.
- If the injured employee decides that he/she does not want a TeleMedicine visit, CorVel will immediately offer to schedule the injured employee with a traditional, in-person PPO medical provider located at a convenient, clinic-based location.

A TeleMedicine “visit” is defined as “A Consultation Unit” is a single synchronous consultation through the Platform between a Qualified Professional and a patient.”

SCHEDULE 13
Workers' Compensation Lien Resolution Services
Terms and Conditions

1. DESCRIPTION OF SERVICES

a) Lien Resolution Services. CorVel shall provide Lien Resolution Services for Customer through its CareMC Application to control and provide resolution and closures to lien file cases. CorVel shall utilize industry standard processes including having CorVel attend Workers Compensation Appeals Board (“WCAB”) conferences & trials, and negotiate as required or applicable.

b) Workers Compensation Appeals Boards Serviced:

AHM – Anaheim	SBR – San Bernardino
OXN - Oxnard	SDO – San Diego
POM – Pomona	VNO – Van Nuys
RIV- Riverside	SAC – Sacramento
ANA - Santa Ana	OAK – Oakland
LBO – Long Beach	SFO – San Francisco
LAO – Los Angeles	STK – Stockton
MDR – Marina Del Rey	

c) Workers Compensation Appeals Boards Serviced on a case-by-case basis:

SBA – Santa Barbara	RED – Redding
SLO – San Luis Obispo	FRE – Fresno
SJO – San Jose	BAK – Bakersfield

2. DELIVERY OF SERVICES

a) Claim Referral. Lien resolution services are on a referral basis per claim and subject to prior Customer approval.

b) Reporting. CorVel shall provide monthly reports at no charge to Customer.

c) Case-in-chief walk-through service.

- (i) CorVel shall provide Walk-throughs for pro-per cases, and as needed for litigated claims.
- (ii) Customer’s claims adjuster professional shall provide referrals for each lien resolution settlement agreement.
- (iii) CorVel shall prepare all required documentation and file packets, obtain the adjudicating number and the order approving from the judges at the WCAB.
- (iv) Results are reported by CorVel to Customer weekly at the end of the same week they are assigned.

d) Service and Review of Initial Discovery.

CorVel shall review, gather and serve all documents relevant to the case and the outstanding liens that will be necessary to satisfy the requirements of discovery and due process, including, but not limited to: Settlement documents, medical reports, Request for Authorizations (“RFA’s”) Utilization Review (“UR”)determinations, objection letters, and bill review.

e) Declaration of Readiness Filings.

CorVel shall utilize an electronic filing of a declaration of readiness to proceed to request a hearing date with the WCAB in order to facilitate or expedite Lien Resolution and/or Litigation (if necessary).

f) Attendance at the WCAB for Lien Conference and/or Lien Trials

CorVel shall have its own experienced hearing representatives appear at the WCAB on behalf of the Customer with the goal of resolving any outstanding liens, or moving towards litigation (if necessary).

g) Litigation Review and Support

CorVel shall review and analyze the lien claimant evidence provided in support of CorVel's position when a matter is set for a lien trial.

h) CorVel's Obligations

(i) CorVel shall provide Lien Resolution Services as described herein to Customer upon receipt of specific referral from Customer. In the absence of instructions from Customer to the contrary, which CorVel must approve and Lien Resolution Services shall be performed as described herein.

(ii) CorVel shall complete its Lien Resolution Services within sixty (60) days of referrals without litigation, provided there are no delays from litigation.

(iii) Any conflicts or complaints from providers and/or their lien claimant vendors ("Complaints") concerning Lien Resolution Services completed by CorVel initially will be handled directly by CorVel. CorVel will provide an initial response to a Complaint within one (1) business day following the date on which CorVel received the Complaint. CorVel will send a written response to the complainant within five (5) business days that summarizes the nature of the Complaint and the steps CorVel has taken to resolve it. A copy of this response will be sent to the attention of the designated Customer account representative. Different or more specific parameters of CorVel's authority to respond to and resolve Complaints hereunder may be agreed to mutually by the parties. Further, Customer shall have the right, but not the obligation, at any time, to interject itself into a Complaint between CorVel and a provider and to resolve the Complaint in a manner acceptable to Customer at its sole discretion. Notwithstanding the foregoing, Customer shall retain full responsibility for payment of all benefits and any other expenses or services required to be paid or provided under applicable policies or state and federal workers' compensation laws.

(iv) CorVel agrees to supply Customer, at no additional cost, a transmission or report in the format in which it is then customarily stored by CorVel reflecting the results of Lien Resolution Services provided monthly. Such data shall be provided as to further allow for the application of Lien Resolution Service fees to the individual claim file and the payment of said fees.

3. PRICING

(a) Pricing is based on a percent of savings after fee schedule application. There is a per lien cap that ensures the client pays no more than this maximum amount per lien. Some items, such as a walk-through service and an adequacy hearing are billed at a flat rate.

(b) Method of Pricing: Percentage of savings per lien after fee schedule is applied, versus total billed amount. Savings is defined as the difference between total claimed lien amount after fee schedule reduction and final lien settlement amount, or amount ordered paid by WCAB.

(i) For liens not subject to Official Medical Fee Schedules ("OMFS") nor Usual and Customary, pricing will be calculated at percentage of savings from overall difference between total amount billed and final lien settlement amount.

(c) Authority to resolve liens without determination of OMFS granted by employer to expedite file closure will be invoiced at a reduced percentage of savings from the billed amount.

(d) Litigation pricing is applied to liens that are the subject of a pre-trial conference statement. This includes, but is not limited to: service of trial exhibits, review of lien claimant trial exhibits, pre-trial and post-trial briefings as well as points & authorities, petitions for reconsideration, and petitions for costs and/or sanctions for frivolous litigation.

Claim Referral:

Lien resolution services are on a referral basis per claim, and subject to client approval.

Litigation pricing is only applied to liens that are the subject of a pre-trial conference statement. This includes, but is not limited to: service of trial exhibits, review of lien claimant trial exhibits, pre-trial and post-trial briefings as well as points & authorities, petitions for reconsideration, and petitions for costs and/or sanctions for frivolous litigation.

EXHIBIT "D" **CareMC License Agreement**

This CAREMC LICENSE AGREEMENT (the "CareMC License Agreement") is incorporated by reference into the Services Agreement (the "Master Agreement") to which it is attached. The parties acknowledge and agree that the terms and conditions under which the Services are provided by CorVel and received by Customer shall be governed by the Master Agreement (including without limitation all additional Exhibits and applicable Schedules attached thereto), while the terms and conditions under which Customer may access and use the Online Services shall be governed by the terms and conditions of this CareMC License Agreement. All defined terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Master Agreement.

1. ACCESS TO THE CAREMC APPLICATION

A. Registration Information. Prior to accessing the CareMC Application, Customer shall provide CorVel with certain registration information requested therein ("Registration Information"). Customer covenants that the Registration Information Customer provides will be true, accurate, current and complete and will be updated as necessary.

B. Passwords and Levels of Access. As soon as practicable after the execution of this Agreement, CorVel shall create a unique username and password for each individual Authorized User identified by Customer as requiring access to the Online Services. Customer shall then designate a group of Authorized Users. The group of Authorized Users ("Restricted Users") shall have "read only" access to only the data available on the CareMC Site that relates to claims specific to that Authorized User and such other data that Customer specifically requests in writing be accessible to such Authorized User. If Customer requires a second group of Authorized Users ("Non-Restricted Users") shall have editing access to all data available on the CareMC Site that relates to claims specific to Customer. Access by Individual Users and Non-Restricted Users to data available on the CareMC Site shall be subject in all cases to any limitations imposed by applicable law.

C. Personal Information Data. Authorized Users shall have access to all data available through the CareMC Application, including data that constitutes or contains "Personal Information" as such term is defined in applicable state and federal privacy laws, but shall only have access to Personal Information to the extent necessary for Customer to read only a claim, and then only to those portions or amounts of Personal Information that are determined by CorVel, in its sole discretion, to be the minimum necessary for Customer to edit such claim.

D. Security of Passwords. Customer acknowledges and agrees that it shall be solely responsible for (i) selecting Authorized Users, (ii) assigning the various levels of authority and access each Authorized User may have to the CareMC Application, Online Services and Customer Data, including by determining which Authorized Users shall be Non-Restricted Users, (iii) ensuring that only Authorized Users have access to the passwords provided by CorVel or changed by Authorized Users, (iv) implementing a system to control, track and account for all passwords, (v) strictly maintaining the confidentiality and integrity of all passwords and levels of authority among Authorized Users, and (vi) ensuring that Authorized Users shall at all times comply with the terms and conditions of this Agreement. Customer further agrees that it shall notify CorVel immediately in writing if the security or integrity of a password has been compromised. CorVel will provide reasonable cooperation to Customer in the event of a security breach. Such support will include but not be limited to suspending service for passwords whose security or integrity has been violated. Passwords may be changed at any time by Authorized Users, and must be changed at least once every ninety (90) days.

E. Customer Data. Responsibility for ensuring that the content and data provided by or for Customer ("Customer Data") to be entered into the CareMC Application by CorVel is accurate and reflects Customer's requirements lies solely with Customer. All data generated by and through Customer's use of the CareMC Application and Online Services shall reside on CorVel's

server. CorVel reserves the right to temporarily suspend access to any Customer Data that it determines, in its sole discretion, violates the terms and conditions of this CareMC License Agreement or any applicable laws.

F. Customer Representations. Customer represents that (i) it has the legal authority to provide the Customer Data to CorVel hereunder, and (ii) it is fully aware and knowledgeable of and shall comply with its duties and responsibilities with respect to the privacy and confidentiality of medical records and protected health information under applicable federal and state laws, including but not limited to those imposed by applicable state and federal privacy laws. Upon written notice to Customer, CorVel may modify or temporarily suspend Customer's access to and use of the CareMC Application, Online Services and/or CareMC Site as necessary to comply with any law or regulation.

2. LICENSE AND RESTRICTIONS

A. Limited License. Subject to the terms and conditions of this CareMC License Agreement, CorVel grants to Customer during the License Term (as defined in Section 5A below) a limited, non-exclusive, non-transferable, non-sublicensable license to access and use, and allow Authorized Users to access and use, the CareMC Application via the CareMC Site solely for Customer's own internal business use and operations. Customer shall access and use the CareMC Application in accordance with the user's guides and online instruction provided to Customer by CorVel ("Documentation") and all applicable laws, statutes, rules and regulations.

B. Restrictions. Customer shall not, and shall not allow Authorized Users or any third party to (i) rent, lease, re-license or otherwise provide access to the CareMC Application or Online Services to any third party, (ii) alter, modify or create derivative works of the CareMC Application, (iii) use any reverse compilation, decompilation or disassembly techniques or similar methods to determine any design structure, concepts and construction method of the CareMC Application or replicate the functionality of the CareMC Application for any purpose, or (iv) copy the CareMC Application or any content, materials, information and other data provided by CorVel on the CareMC Site or used in providing the Online Services ("CorVel Content") and/or Documentation without CorVel's prior written consent.

C. Third Parties. Customer shall not allow any third party to have access to the CareMC Application or Online Services without prior written consent of CorVel and ensuring that (i) such third party enters into a legally enforceable written agreement with CorVel, or (ii) CorVel and Customer enter into an agreement whereby Customer assumes all responsibility and liability for access by such third party.

D. Ownership and Changes. CorVel owns and shall retain all right, title and interest in and to the CareMC Application, Documentation, CareMC Site, Online Services, CorVel Content and any intellectual property rights inherent therein or arising therefrom. In addition to CorVel's rights in the individual elements of the CorVel Content, CorVel owns a copyright in the selection, coordination, arrangement and enhancement of the CorVel Content. Neither Customer nor any Authorized User shall obtain any ownership rights, express or implied, or any other rights other than those expressly set forth herein in the CareMC Application, Documentation or CorVel Content. CorVel reserves the right, at any time in its sole discretion and without liability to Customer, to delete or change features of the CareMC Application, CareMC Site or Online Services provided such changes do not materially alter the functionality of the CareMC Application.

E. Compliance Monitoring and Audits. CorVel may monitor and perform remote audits of Customer's use of the CareMC Application and CareMC Site for the purpose of verifying that Customer and Authorized Users are using the CareMC Application in compliance with the terms of this CareMC License Agreement. CorVel reserves the right to temporarily suspend Customer's or any Authorized User's access to the CareMC Application in the event Customer or such Authorized User engages in, or CorVel in good faith suspects is engaged in, any unauthorized conduct.

3. INFRASTRUCTURE, MAINTENANCE AND SUPPORT

A. CorVel Infrastructure Obligations. Subject to Customer's compliance with the terms and conditions of this CareMC License Agreement, CorVel shall be responsible for providing and maintaining the hardware, software and other equipment required to host the CareMC Application for Customer ("CareMC Infrastructure"). The CareMC Infrastructure is subject to modification by CorVel from time to time for purposes such as adding new functionality, maximizing operating efficiency and upgrading hardware, provided such modifications shall not in the aggregate degrade the performance of the Online Services utilized by Customer. Customer acknowledges and agrees that such modifications may require changes to Customer's Internet access and/or telecommunications infrastructure to maintain Customer's desired level of performance. CorVel shall give Customer reasonable prior written notice of any required modifications.

B. Customer Infrastructure Obligations. Except for the CareMC Infrastructure, which will be provided by CorVel, Customer shall be responsible for obtaining and maintaining all hardware, software, equipment, Internet access and/or telecommunications services and other items or services furnished by third party vendors or providers ("Third Party Providers") required to enable Customer to access and use the CareMC Application and CareMC Site as contemplated hereunder.

C. Support. CorVel will provide general support regarding questions on the CareMC Application via email and by telephone from Monday through Friday between the hours of 5:00 a.m. and 6:00 p.m. Pacific Standard Time, excluding holidays.

D. Scheduled Maintenance. CorVel will use reasonable efforts to (i) perform any scheduled downtime outside of Customer's normal business hours, (ii) notify Customer of all scheduled downtimes at least seventy-two (72) hours in advance, and (iii) perform software updates to the CareMC Application with minimal disruption to Customer's use of the Online Services.

E. System Monitoring. CorVel will use reasonable efforts to continuously monitor its web servers and database servers to ensure that they are functioning properly.

F. Security. CorVel will implement and use reasonable efforts to maintain secure systems through the use of firewalls, virtual private networks (VPN) and other security technologies. Any security violations that affect the data of Customer will be reported to Customer as pursuant to applicable state and federal security laws.

G. Disaster Recovery and Backup. CorVel will use reasonable efforts to perform nightly backups of essential data on its web servers and database servers. CorVel has implemented third party backup and restoration technology to enable high speed recovery of data. CorVel utilizes redundant load balanced industry standard servers and Cloud Computing Platform and Services provided by Microsoft for 24x7, 365 day access, except for regularly scheduled system maintenance and upgrade processes. SQL Server databases are hosted on clustered servers offering fail-over capability, redundant communication links, and load balanced application servers. Backup tapes are restored into a test environment not less than quarterly to confirm validity of backups. The CareMC Site has redundant inbound Internet and Intranet connectivity.

4. APPLICATION SPECIFIC DISCLAIMERS

A. Disclaimers. TO THE EXTENT ALLOWED BY APPLICABLE LAW, EXCEPT FOR THE LIMITED WARRANTIES DESCRIBED IN THE MASTER AGREEMENT, CORVEL MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, SATISFACTORY QUALITY AND NONINFRINGEMENT.

B. Internet Usage. Customer acknowledges that the Internet is essentially an unregulated, insecure and unreliable environment, and that the ability of Customer to access and use the CareMC Application is dependent on the Internet and hardware, software and services provided by various Third Party Providers. CORVEL SHALL NOT BE RESPONSIBLE FOR CUSTOMER'S INABILITY TO ACCESS OR USE THE CAREMC APPLICATION TO THE EXTENT CAUSED BY

FAILURES OR INTERRUPTIONS OF ANY HARDWARE, SOFTWARE OR SERVICES PROVIDED BY CUSTOMER OR THIRD PARTY PROVIDERS.

c. CareMC Application. CUSTOMER ACKNOWLEDGES AND AGREES THAT CORVEL DOES NOT WARRANT THAT THE CAREMC APPLICATION OR ONLINE SERVICES ARE ERROR FREE, THAT CUSTOMER WILL BE ABLE TO ACCESS OR USE THE CAREMC APPLICATION OR ONLINE SERVICES WITHOUT PROBLEMS OR INTERRUPTIONS, OR THAT THE CAREMC SITE AND CAREMC APPLICATION ARE NOT SUSCEPTIBLE TO INTRUSION, ATTACK OR COMPUTER VIRUS INFECTION.

5. LICENSE TERM AND TERMINATION

A. License Term. This CareMC License Agreement shall be effective as of the Effective Date and, unless terminated earlier as provided below, shall automatically terminate upon expiration or termination of the Master Agreement (the term of this CareMC License Agreement, the "License Term").

B. Termination for Convenience. Either party shall have the right to terminate this CareMC License Agreement for any reason or for no reason, upon ninety (90) days written notice to the other party.

C. Termination for Cause. This CareMC License Agreement may be terminated by either party for cause as follows: (i) upon thirty (30) days written notice if the other party breaches or defaults under any material provision of this Agreement and does not cures such breach prior to the end of such thirty (30) day period, (ii) effective immediately and without notice if the other party ceases to do business, or otherwise terminates its business operations, except as a result of an assignment, as permitted under the terms and conditions of this CareMC License Agreement, or (iii) effective immediately and without notice if the other party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other (and not dismissed within ninety (90) days).

D. Effect of Termination. Expiration or termination of this CareMC License Agreement shall have the following effects: (i) CorVel shall provide Customer with any proprietary data belonging to Customer, in the current format in which it is stored at CorVel at the termination of this CareMC License Agreement, (ii) all licenses granted under this CareMC License Agreement shall terminate immediately, (iii) all rights to use the CareMC Application and Online Services shall cease immediately, and (iv) each party shall promptly return all information, documents, manuals and other materials belonging to the other party related to this CareMC License Agreement, whether in printed or electronic form, including without limitation all confidential information of the other party then currently in its possession, provided each party may retain one (1) copy of such materials for archival purposes.

E. Survival. Except to the extent expressly provided to the contrary herein or in the Master Agreement, any right of action for breach of the CareMC License Agreement prior to termination, and the following provisions shall survive the termination of this CareMC License Agreement: Sections 1B-F, 2B, 2D, 4 and 5E.

Attachment A to Exhibit D
End User License Agreement
Terms are non-negotiable

Such access shall provide Customer's claimants an opportunity to (i) review the current status of their individual claim, (ii) share pain level data with their healthcare provider by taking a Pain Level Survey, (iii) receive Electronic Funds Transfer ("EFT") direct deposit transactions with respect to claims, and (iv) utilize other functions designed to assist users in interactions with their health plan and healthcare providers (the "App Services"). For access by Customer claimant, such Customer claimant will be required to have a smartphone including but not limited to an Apple smartphone or Android smartphone or other smartphone device with such access capabilities. Customer acknowledges the terms of Attachment A hereunder which shall be a part of the My Care App and which the End User ("Claimant") shall be responsible for. The My Care App is at no costs to Customer for these Services.

PLEASE READ THIS LICENSE AGREEMENT BEFORE USING THE APP. USE OF THE APP INDICATES END USER'S ACCEPTANCE OF THIS END USER LICENSE AGREEMENT. IF END USER DOES NOT AGREE WITH THE TERMS, END USER SHOULD NOT USE THE APP.

1. License Grant; License Restrictions. Either of CorVel Enterprise Comp, Inc. or CorVel Healthcare Corporation, as applicable, ("CorVel") provides the mobile software application program and user manual(s) or help files contained therein, and any modifications, updates, revisions, or enhancements thereto received by End User from CorVel (collectively, the "App"), and licenses its use solely pursuant to the terms stated below:

- a. End User is granted a nontransferable license to use the App under the terms stated in this Agreement for personal use. End User may not use the App for commercial purposes. Title and ownership of the App and of the copyright in the App remains with CorVel;
- b. The App may be used by End User on a single mobile device, which End User owns or uses and for which the App is designed to operate;
- c. End User may not make copies, translations, or modifications of or to the App. End User may not alter, obscure, or remove the copyright notice on any copy of the App;
- d. End User may not assign, sell, distribute, lease, rent, sublicense, or transfer the App or this license or disclose the App to any other person. End User may not reverse-engineer, disassemble, or decompile the App or otherwise attempt to discover the source code or structural framework of the App; and
- e. CorVel may terminate this Agreement and the license granted hereunder at any time. This Agreement and the license granted hereunder automatically terminates if End User fails to comply with any provision of this Agreement. End User agrees upon termination to: (i) cease using the App and providing or accessing any data or information by or through the App, and (ii) destroy the App, together with all copies, modifications, and merged portions in any form, including any copy on End User's mobile device or on any computer.

2. Limited Warranty. The App is provided "AS IS" and with all faults. NO WARRANTIES

ARE EXPRESSED AND NONE SHALL BE IMPLIED. CORVEL SPECIFICALLY EXCLUDES ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. CORVEL DOES NOT WARRANT THAT USE OF THE APP WILL BE UNINTERRUPTED OR ERROR-FREE.

3. Maintenance & Support. The App is maintained by CorVel or its subcontractors. From time to time, CorVel may provide modifications, updates, revisions, or enhancements, all of which are offered pursuant to the terms and conditions of this Agreement. CorVel does not provide support to End Users. All support requests should be directed at End User's employer or other person responsible to manage End User's claims and not at CorVel.

4. Consent to use Data. All data or information submitted by End User through the App shall be used by CorVel in accordance with CorVel's Privacy Policy posted at: <http://www.corvel.com/privacy-policy/>

5. Limitations of Liability (End User). IN NO EVENT WILL CORVEL'S LIABILITY FOR ACTUAL DIRECT DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE APP EXCEED \$100. IN NO EVENT WILL CORVEL BE LIABLE FOR ANY LOST PROFITS, SALES, BUSINESS, DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM THE USE OF THE APP OR OTHERWISE ARISING FROM THIS AGREEMENT, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. The parties agree that the above limits represent a reasonable allocation of risk.

6. Governing Law; Exclusive Jurisdiction. This Agreement is governed by the laws of California. End User agrees that the federal or state courts sitting in State of California, shall be the exclusive courts of jurisdiction and venue for any litigation, special proceeding or other proceeding as between the parties that may be brought, or arise out of, or in connection with, or by reason of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed.

7. Indemnification (End User). End User shall defend, indemnify and hold harmless CorVel from and against damages, liabilities and reasonable costs and expenses, including reasonable legal fees arising out of or relating to: (i) End User's use of the App in violation of the terms of this Agreement, (ii) data or content included in or omitted from content and data input into the App by End User or any other third party using End User's mobile device, and (iii) any claim by an employee of End User or End User's insureds brought against CorVel due to the recommendations made by CorVel through the App.

8. Disclaimer. CorVel shall not be responsible or liable for any third party claims arising from the negligent acts, errors, omissions, willful misconduct or fraud caused by End User in connection with its use of the App or otherwise attributable this Agreement.

9. Assignment. End User may not assign any of End User's rights or delegate any of End User's obligations under this Agreement without the prior written consent of CorVel. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10. Notice. All notices required to be sent hereunder shall be in writing and shall be deemed

to have been given when mailed by first class mail to the address listed below.

11. Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

12. Waiver. The waiver by either party of a breach of any provision of this Agreement or the failure by either party to exercise any right hereunder shall not operate or be construed as a waiver of any subsequent breach of that right or as a waiver of any other right.

13. Export Administration. End User agrees to comply fully with all relevant export laws and regulations of the United States ("Export Laws") to assure that neither the App nor any direct product thereof is (1) exported, directly or indirectly, in violation of Export Laws; or (2) are used for any purposes prohibited by the Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation.

14. Entire Agreement. This Agreement shall constitute the complete agreement between the parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.

15. Survival. The provisions of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 shall survive the termination of this Agreement.

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Adopted: December 6, 1985
Last Amended: July 1, 2019

ADDENDUM A WORKERS' COMPENSATION CLAIMS ADMINISTRATION STANDARDS

The following Standards have been adopted by Public Risk Innovation, Solutions, and Management (hereinafter PRISM) in accordance with Article 18(b) of the PRISM Joint Powers Agreement. It is the intent of these Standards to ensure compliance with all applicable Labor Code and California Code of Regulations Sections. In the event that there exists a conflict between the Standards, the Labor Code or the Code of Regulations, the most stringent requirement shall apply.

I. CLAIMS HANDLING - ADMINISTRATIVE

A. Case Load

1. Each claims examiner assigned to the Member should handle a targeted caseload of 150 but not to exceed 165 claims. In situations where caseloads include future medical and medical only claims, these claims shall be counted as 2:1 in the caseload limit.
2. Supervisory personnel should not handle a caseload, although they may handle specific issues or a small number of conflict claims.

B. Case Review and Documentation

1. Documentation shall reflect any significant developments in the file and include a plan of action. Plan of action statements shall be updated at the time of examiner diary review.
2. The examiner shall review indemnity and medical-only files at intervals not to exceed 45 calendar days. Future medical files shall be reviewed at intervals not to exceed 90 calendar days.
3. The supervisor shall review all new claims within 60 calendar days of initial set up and subsequently monitor activity on indemnity files at intervals not to exceed 120 calendar days. Future medical files shall be reviewed by the supervisor at intervals not to exceed 180 calendar days.

4. File contents shall comply with Code of Regulations Sections 10101, 10101.1 and 15400, and be kept in a neat and orderly fashion. If claims are maintained in a paperless system, documents shall be clearly identified (e.g., medical report, WCAB Orders, legal, etc.).
5. Medical Only Claims
 - a. If a medical-only claim is still open at 90 calendar days, it shall be transferred to an indemnity examiner.
 - b. If, at any time, it is anticipated there will be indemnity benefits paid, the claim shall be transferred to an indemnity claim type.
 - c. If the medical-only claim remains open at 180 days, the claim shall be converted to an indemnity claim type, unless there is documentation showing that medical treatment will be ending and the claimant will be discharged from care within the next 30 days, or the claimant is only seeking treatment for a blood-borne pathogen exposure protocol.

C. Communication

1. Telephone Inquiries

Return calls shall be made within 1 working day of the original telephone inquiry. All documentation shall reflect these efforts.

2. Incoming Correspondence

All correspondence received shall be clearly stamped with the date of receipt.

3. Return Correspondence

All correspondence requiring a written response shall have such response completed and transmitted within 5 working days of receipt.

4. Ongoing Claimant Contact

On cases involving unrepresented injured workers who are off work, telephone contact shall be made at a minimum of once every 30 days and within 3 working days after discharge from the hospital or outpatient facility following a surgical procedure. This is in addition to nurse case management involvement on claims where nurse case managers are assigned.

D. Fiscal Handling

1. Fiscal handling for indemnity benefits on active cases shall be balanced with appropriate file documentation on a semi-annual basis and prior to sending a benefit termination notice to verify that statutory benefits are paid appropriately. Balancing is defined as, "an accounting of the periods and amounts due in comparison with what was actually paid".
2. In cases of multiple losses with the same person, payments shall be made on the appropriate claim file.

E. Medicare Reporting

Mandatory reporting to the Center for Medicaid Services (CMS) shall be completed directly or through a reporting agent in compliance with Section 111 of the Medicare Medicaid and SCHIP Extension Act of 2007 ("MMSEA"). Medicare eligibility shall be documented in the claim file at time of settlement evaluation.

II. CLAIM CREATION

A. Three-Point Contact

Three-point contact shall be conducted on all claims with the non-represented injured worker, employer representative and treating physician within 3 working days of receipt of the claim by the third party administrator or self-administered entity. If a nurse case manager is assigned to the claim, initial physician contact may be conducted by either the claims examiner or the nurse case manager. This initial contact should be substantive and clearly documented in the claim file. In the event a party is non-responsive, there shall be evidence of at least three documented attempts to reach the individual.

B. Compensability

1. The initial compensability determination (accept claim, deny claim or delay acceptance pending the results of additional investigation) and the reasons for such a determination shall be made and documented in the file within 14 calendar days of the filing of the claim with the employer. In the event the claim is not received by the third party administrator or self-administered entity within 14 calendar days of the filing of the claim with the employer, the third party administrator or self-administered entity shall make the initial compensability determination within 7 calendar days of receipt of the claim.

2. Delay of benefit letters shall be mailed in compliance with the Division of Workers' Compensation (DWC) guidelines. In the event the employer does not provide notice of lost time to the third party administrator or self-administered entity timely to comply with DWC guidelines, the third party administrator or self-administered entity shall mail the benefit letters within 7 calendar days of notification.
3. The final compensability determination shall be made by the claims examiner or supervisor within 90 calendar days of employer receipt of the claim form.

C. AOE/COE Investigation

If a decision is made to delay benefits on a claim, an AOE/COE investigation shall be initiated within 3 working days of the decision to delay. This may include, but is not limited to, assigning out for witness/injured worker statements, initiating the QME/AME process, requesting medical records, etc.

D. Reserves

1. Using the information available at claim file set up, an initial reserve shall be established for the most probable case value.
2. The initial reserve shall be electronically posted to the claim within 14 calendar days of receipt of the claim.

E. Indexing

All claims shall be reported to the Index Bureau at time of initial set up and re-indexed on an as needed basis thereafter. Blood borne pathogen exposure claims are an exception to this requirement.

PRISM maintains membership with the Index Bureau that members can access.

III. CLAIM HANDLING – TECHNICAL

A. Payments

1. Initial Temporary and Permanent Disability Indemnity Payment
 - a. The initial indemnity payment shall be issued to the injured worker within 14 calendar days of knowledge of the injury and disability. In the event the third party administrator or self-administered entity is not notified of the injury and disability

within 14 calendar days of the employer's knowledge, the third party administrator or self-administered entity shall make payment within 7 calendar days of notification. Initial permanent disability payments shall be issued within 14 calendar days after the date of last payment of temporary disability. Effective 1/1/2013, permanent disability payments shall be issued upon approval of an Award pursuant to Labor Code Section 4650(b)(2). Prior to a PD Award, advances may be due if the employer has not offered the employee a position paying at least 85% of their wages and compensation at time of injury or the employee is not employed in a position paying at least 100% of their wages and compensation at time of injury. This shall not apply with salary continuation.

- b. The properly completed DWC Benefit Notice shall be mailed to the employee within 14 calendar days of the first day of disability. In the event the third party administrator or self-administered entity is not notified of the first day of disability until after 14 calendar days, the DWC Benefit Notice shall be mailed within 7 calendar days of notification.
- c. Self-imposed penalty shall be paid on late payments in accordance with Section III. A.7 of this document.
- d. Overpayments shall be identified and reimbursed timely where appropriate. The third party administrator or self-administered entity shall request reimbursement of overpaid funds from the party that received the funds. If necessary, a credit shall be sought as part of any resolution of the claim.

2. Subsequent Temporary and Permanent Disability Payments

- a. Eligibility for indemnity payments subsequent to the first payment shall be verified, except for established long-term disability.
- b. Ongoing indemnity payments shall be paid in accordance with Labor Code Section 4650(c).
- c. Subsequent DWC benefit notices shall be issued in accordance with CCR 9812.
- d. Self-imposed penalty shall be paid on late payments in accordance with Section III. A.7 of this document.

3. Final Temporary and Permanent Disability Payments

- a. All final indemnity payments shall be issued timely.
- b. The appropriate DWC benefit notices shall be issued in accordance with CCR 9812.
- c. Self-imposed penalty shall be paid on late payments in accordance with Section III. A.7. of this document.

4. Award Payments

- a. The claim file shall reflect demonstrated efforts to initiate/batch payments on undisputed Awards, Commutations, or Compromise and Release agreements within 10 working days following receipt of the appropriate document, unless the Award indicates payment is due sooner.
- b. For all claims in the Primary Workers' Compensation (PWC) Program and/or excess reportable claims, copies of all Awards shall be provided to PRISM at time of payment.

5. Medical Payments

- a. Medical treatment billings (physician, pharmacy, hospital, physiotherapist, etc.) shall be reviewed for correctness, approved for payment and paid within 60 days of receipt.
- b. The medical provider shall be notified in writing within 30 days of receipt of an itemized bill if a medical bill is contested, denied or incomplete.
- c. A bill review process should be utilized whenever possible. There should be participation in a PPO and/or MPN whenever possible.

6. Injured Worker Reimbursement Expense

- a. Reimbursements to injured workers shall be issued within 15 working days of the receipt of the claim for reimbursement.
- b. Advance travel expense payments shall be issued to the injured worker 10 working days prior to the anticipated date of travel.

7. Penalties

- a. Penalties shall be coded so as to be identified as a penalty payment.
- b. If the Member utilizes a third party administrator, the Member shall be advised of the assessment of any penalty for delayed payment and the reason thereof, and the administrator's plans for payment of such penalty, on a monthly basis.
- c. If the Member utilizes a third party administrator, the Member, in their contract with the administrator, shall specify who is responsible for specific penalties.

B. Medical Treatment

1. Each Member shall have in place a Utilization Review process as set forth in Labor Code Section 4610.
2. Disputes regarding utilization review determinations shall be resolved using the Independent Medical Review process set forth in Labor Code Section 4610.5.
3. Nurse case managers shall be utilized where appropriate. Rationale for assignment and continued necessity shall be documented in the claim notes at each regular diary review.
4. If enrolled in a Medical Provider Network, the network shall be utilized whenever appropriate.

C. Apportionment

1. Investigation into the existence of apportionment shall be documented.
2. If potential apportionment is identified, all efforts to reduce exposure shall be pursued.

D. Disability Management

1. The third party administrator or self-administered entity shall work proactively to obtain work restrictions and/or a release to full duty on all cases. The TPA or self-administered entity shall notify a designated Member representative immediately upon receipt of temporary work restrictions or a release to full duty, and work closely with the Member to establish a return to work as soon as possible.

2. The third party administrator or self-administered entity shall notify a designated Member representative immediately upon receipt of an employee's permanent work restrictions so that the Member can determine the availability of alternative, modified or regular work.
3. If there is no response within 20 calendar days, the third party administrator or self-administered entity shall follow up with the designated Member representative.
4. Members shall have in place a process for complying with laws preventing disability discrimination, including Government Code Section 12926.1, which requires an interactive process with the injured worker when addressing a return to work particularly with permanent work restrictions.
5. Third party administrators or self-administered claims professional shall cooperate with members to the fullest extent, in providing medical and other information the member deems necessary for the member to meet its obligations under federal and state disability laws.

E. Supplemental Job Displacement Benefits

1. Supplemental Job Displacement Benefits – Dates of injury on or after 1/1/04 and before 1/1/13: Benefits pursuant to Labor Code Section 4658.5 shall be timely provided. Dates of injury on or after 1/1/13: Benefits pursuant to Labor Code 4658.7 shall be timely provided.
2. The third party administrator or self-administered entity shall secure the prompt conclusion of SJDB.

F. Reserving

1. Reserves shall be reviewed at regular diary and at time of any significant event, e.g. - surgery, P&S/MMI, return to work, etc., and adjusted accordingly. This review shall be documented in the file regardless of whether a reserve change was made. Where the SIP model does not apply, claims shall be reserved for the most probable value.
2. Indemnity reserves shall reflect actual temporary disability indemnity exposure with 4850 differential listed separately.
3. Permanent disability indemnity exposure shall include life pension reserve if appropriate.

4. Future medical claims shall be reserved in compliance with CCR 15300 (b)(4) allowing adjustment for reductions in the approved medical fee schedule, undisputed utilization review, medically documented non-recurring treatment costs and medically documented reductions in life expectancy.
5. Allocated expense reserves shall include medical cost containment, legal, investigation, copy service and other related fees.
6. A reserve worksheet shall be utilized and/or detailed rationale substantiating reserve levels shall be documented within the claim file.

G. Resolution of Claim

1. Within 10 working days of receiving medical information indicating that a claim can be finalized, the claims examiner shall begin appropriate action to finalize the claim.
2. Follow up finalization efforts shall continue and be documented at regular diary reviews until resolution is complete.
3. Settlement value shall be documented appropriately utilizing all relevant information.
4. Where settlement includes resolution of future medical for a Medicare beneficiary or an expected Medicare beneficiary, the settlement shall document the strategy to protect Medicare's secondary payer status.
5. Pursuant to CCR15400.2, claim files with awards for future benefits shall be reviewed for administrative closure two years after the last provision of benefits.

H. Settlement Authority

1. No agreement shall be authorized involving liability, or potential liability, of PRISM without the advance written consent of PRISM. The member shall be notified of any settlement request submitted to PRISM.
2. The third party administrator shall obtain the Member's authorization on all settlements or stipulations in excess of the settlement authority provided in any provision of the individual contract between the Member and the claims administrator.

3. Proof of settlement authorization(s) shall be maintained in the claim file.

IV. LITIGATED CASES

The third party administrator or self-administered entity shall establish written guidelines for the handling of litigated cases. The guidelines should, at a minimum, include the points below, which may be adopted and incorporated by reference as "the Guidelines".

1. The third party administrator or self-administered entity shall promptly initiate investigation of issues identified as material to potential litigation. The Member shall be alerted to the need for in-house investigation, or the need for a contract investigator who is acceptable to the Member. The Member shall be kept informed on the scope and results of investigations.
2. The third party administrator or self-administered entity shall, in consultation with the Member, assign defense counsel from a list approved by the Member. Initial referral and ongoing litigation management shall be timely and appropriate. The third party administrator or self-administered entity shall maintain control of the ongoing claim activities.
3. Settlement proposals directed to the Member shall be forwarded by the third party administrator, self-administered entity or defense counsel in a concise and clear written form with a reasoned recommendation. Settlement proposals shall be presented to the Member as directed so as to insure receipt in sufficient time to process the proposal.
4. Knowledgeable Member personnel shall be involved in the preparation for medical examinations and trial, when appropriate or deemed necessary by the Member so that all material evidence and witnesses are utilized to obtain a favorable result for the defense.
5. The third party administrator or self-administered entity shall comply with any reporting requirement of the Member.

V. SUBROGATION

1. In all cases where a third party (other than a Member employee or agent) is responsible for the injury to the employee, attempts to obtain information regarding the identity of the responsible party shall be made within 14 calendar days of recognition of subrogation potential.

2. Once identified, the third party shall be contacted within 14 calendar days with notification of the Member's right to subrogation and the recovery of certain claim expenses.
3. If the third party is a governmental entity, a claim shall be filed with the governing board (or State Board of Control as to State entities) within 6 months of the injury or notice of the injury. If the third party is a non-governmental entity, a complaint shall be filed in civil court within two years in order to preserve the statute of limitations.
4. Periodic contact shall be made with the responsible party and/or insurer to provide notification of the amount of the estimated recovery to which the Member shall be entitled.
5. If the injured worker brings a civil action against the party responsible for the injury, the claims administrator shall consult with the Member about the value of the subrogation claim and other considerations. Upon Member authorization, subrogation counsel shall be assigned to file a Lien or a Complaint in Intervention in the civil action.
6. Whenever practical, the claims administrator shall aggressively pursue recovery in any subrogation claim. They should attempt to maximize the recovery for benefits paid, and assert a credit against the injured worker's net recovery for future benefit payments.
7. Member (and PRISM if applicable) approval is required to waive pursuit of subrogation or agree to a settlement of a third party recovery. This approval shall be documented in the claim file. In cases of self-administered entities, a process shall be documented noting the authority levels within the member organization to waive pursuit of subrogation or agree to a settlement of a third party recovery.

VI. EXCESS COVERAGE

- A. Claims meeting the definition of reportable excess workers' compensation claims as defined by the Memorandum of Coverage Conditions Section shall be reported to PRISM within five working days of the day on which it is known the criterion is met. Utilize the Excess Workers' Compensation First Report Form available through PRISM's website.
- B. Subsequent reports shall be transmitted to PRISM on a quarterly basis on all indemnity claims and on a semi-annual basis on all future medical claims or sooner if claim activity warrants, or at such other intervals as requested by PRISM, in accordance with Underwriting and Claims Administration Standards. Utilize the Excess Workers' Compensation Status Report Form

available through PRISM's website, or a comparable form to be approved by PRISM.

- C. Reimbursement requests shall be submitted in accordance with PRISM's reporting and reimbursement procedures on a quarterly or semi-annual basis depending on claims payment activity. Utilize the Excess Workers' Compensation Claim Reporting and Reimbursement Procedures available through PRISM's website.
- D. A closing report with a copy of any settlement documents not previously sent shall be sent to PRISM.

Following is the history of amendments to this document:

Amended: March 4, 1988
Amended: October 7, 1988
Amended: October 6, 1995
Amended: October 1, 1999
Amended: June 6, 2003
Amended: March 2, 2007
Amended: July 1, 2009
Amended: July 1, 2011
Amended: March 2, 2012
Amended: October 4, 2013
Amended: July 1, 2019



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Council Members Dwight Worden and Dan Quirk, Liaisons to the Lagoon Committee
Prepared by Nestor Machado, Management Analyst

DATE: June 5, 2023

SUBJECT: Lagoon Committee Appointment

REQUESTED ACTION/RECOMMENDATION:

The City Council Liaisons to the Lagoon Committee recommend that the City Council appoint Jeffrey Barnouw to the Lagoon Committee as a voting member to serve a full three-year term starting July 1, 2023, and ending on July 31, 2026.

DISCUSSION/ANALYSIS:

The Lagoon Committee (Committee) is charged with monitoring the preservation and enhancement of the portions of the San Dieguito and Los Penasquitos Lagoons located in the City of Del Mar, as well as any actions outside the City of Del Mar that impact the lagoons. The Committee participates at both the local and regional level. Regionally, the Committee coordinates with the activities of the San Dieguito River Valley Joint Powers Authority (JPA) and monitors the lagoon's restoration plan. Locally, the Committee monitors reports on the health of the lagoons, investigates additional public access opportunities, and encourages educational and informational programs to uncover the lagoons' little-known points of interest. The Committee also monitors and comments on any and all developments that may impact the lagoons.

There is currently one upcoming vacancy on the Committee due to Bill Michalsky's term expiration on June 30, 2023. City staff advertised the vacancy, and two Citizen Interest Forms were received during the recruitment period from Bill Michalsky and Jeffrey Barnouw (Attachment A). The Council Liaisons to the Committee have reviewed the applications and recommend that the City Council appoint Jeffrey Barnouw for a full three-year term effective July 1, 2023, and ending on July 31, 2026.

If the recommended appointment is approved by the City Council, the Committee will maintain a full roster. A copy of the current Committee roster is included as Attachment B.

ATTACHMENTS:

Attachment A – Citizen Interest Forms
Attachment B – Current Lagoon Committee Roster

City Council Action:

DEL MAR CITIZEN INTEREST FORM

MAY 04 2023

City of Del Mar
Administrative Services Dept.

I. APPLICANT INFORMATION

MICHAELSEY Last Name Wm (Bill) First Name L Middle Initial

Home Street Address _____ City, State _____

Business Street Address (if applicable) _____ City, State _____

Home Phone Number _____ Business Phone Number _____ E-mail Address _____

II. APPLICATION DETAILS

I am interested in serving on the following Committees, Board(s) or Commission(s) in order of preference (indicate 1st, 2nd choice, etc.):

- Design Review Board
- Arts Advisory Committee
- Finance Committee
- Measure Q Citizen Oversight Committee
- Other(s) (please indicate): _____
- Planning Commission
- Parks and Recreation Committee
- Traffic and Parking Advisory Committee
- Lagoon Committee
- Sustainability Advisory Committee

Qualifications for appointment and/or reasons for application (attach additional pages as needed):

PREVIOUSLY HAVE SERVED ON THE COMMITTEE AND THE DRB & PLANNING COMMISSION.

Education:

YES COLLEGE (PCC & USC), SOME GRAD WORK AT DUKE/FUQUA SCHOOL

Relevant Experience (job or volunteer etc.):

VOLUNTEER W SAN DIEGO RIVER VLY CONSERVANCY
SIERRA CLUB MEMBER & VOLUNTEER

Name all of the Del Mar Committees/Boards/Commissions that you now serve on:

LAGOON COMMITTEE, ~~BOARD OF PLANNING COM.~~

Please name all the Boards/Commissions/Committee/Task Forces that you have served on in the past, and if you can, the dates of your service:

~~DRB~~ DRB, PLANNING, TPAC

Optional: Please list three Del Mar residents who can provide a reference:

NAME	STREET NAME (no house number)	Phone Number
UDG WAHN	STRATFORD	ON REQUEST
JAY THOMAS	BELLAIRE	"
LESLIE ROSSN	LOIS LAKE	"

Residency

	Month	Year
I have been a resident of California since:	NOV	1944
I have been a resident of San Diego County since:	JAN	1970
I have been a resident of Del Mar since:	"	"

Are you a full-time or part-time resident of Del Mar?

- Full-time
 Part-time

Is Del Mar your primary place of residence?

- Yes No

Are you a register voter in Del Mar?

- Yes No

III. COMMITTEE SPECIFIC QUESTIONS

The following are additional questions related to specific committees. Please answer the questions only for the committee(s) you are applying for.

1. Arts Advisory Committee

Membership on the Arts Advisory Committee is set by category. Which membership category do you best fit in? Select all that apply. (Note that City staff, consultants, and vendors are precluded from serving on the Arts Advisory Committee.)

- Resident with an art background
- Resident without an art background
- Business Owner- Art related business
- Del Mar Foundation Representative
- Del Mar Village Association Representative
- Ex-Officio (non-voting) – with Art related expertise
- Other (please explain): _____

Describe your experience and skills as they relate to the world of community art and fine art.

Why in your opinion is public art valuable to the Del Mar community?

What is your public art philosophy?

2. Finance Committee

The Finance Committee is looking for applicants with financial expertise and background.

Please describe your experience reviewing financial reports, conducting financial studies or any related experience. Please include any experience specific to public entities.

What aspects of the City's finances most interest you and why?

3. **Measure Q Citizen Oversight Committee**

Membership on the Measure Q Citizen Oversight Committee is set by category. To avoid conflicts of interest, members of the Measure Q Citizen Oversight Committee cannot concurrently serve on the Undergrounding Project Advisory Committee. Which membership category do you best fit in? (Select all that apply)

- Current (or within past 5 years) Finance Committee Member
- Business Community Member
- At-large Resident Member
- Other (please explain): _____

4. **Traffic and Parking Advisory Committee**

Which membership category do you best fit in? (Select all that apply)

- Business representative (can be a non-resident)
- Resident
- Other (please explain): _____

What part of town do you live in? Geographic diversity is desirable and will be taken into account. Check the [neighborhood map](#) to verify your neighborhood.

- | | |
|---|--------------------------------------|
| <input type="checkbox"/> North Bluff | <input type="checkbox"/> South Bluff |
| <input type="checkbox"/> North Beach | <input type="checkbox"/> South Hills |
| <input type="checkbox"/> South Beach | <input type="checkbox"/> North Hills |
| <input type="checkbox"/> Village Center | <input type="checkbox"/> Valley |

Do you have any special expertise or experience related to traffic and parking? If yes, please explain:

5. **Parks and Recreation Committee**

The Parks and Recreation Committee is looking for applicants with an interest in the City's parks and open spaces.

Please describe your personal or professional experience related to parks, open spaces, trails, public recreation or any similar experience.

What aspects of the City's parks and recreation most interest you and why?

6. Lagoon Committee

The Lagoon Committee is looking for applicants interested in the preservation of the lagoon and surrounding area.

What aspect(s) of being on the Lagoon Committee most interest you and why?

PREVIOUS COMMITTEE INVOLVEMENT - SIERRA CLUB WORK AND MANY WALKS THROUGH THE VALLEY

7. Shores Advisory Committee

The Shores Advisory Committee is looking for applicants interested in the Shores Park property and planning process.

What aspects of being on the Shores Advisory Committee most interest you and why?

Please describe your vision for the future of Shores Park.

8. Sustainability Advisory Committee

The Sustainability Advisory Committee members are community leaders on environmental issues.

In what ways would you like to contribute to a more sustainable world either in your personal life or on a broader community level?

Please describe any outreach or public education efforts you have participated in related to environmental issues or in other areas. Do you have skills or experience in outreach that you could bring to the Sustainability Advisory Committee?

9. Undergrounding Project Advisory Committee

The Undergrounding Project Advisory Committee is seeking applicants with an interest in the citywide undergrounding project. To avoid conflicts of interest, members of the Undergrounding Project Advisory Committee cannot concurrently serve on the Measure Q Citizen Oversight Committee.

Geographic diversity is desirable and will be taken into account. What part of town do you live in? Check the [neighborhood map](#) to verify your neighborhood.

- North Bluff
- North Beach
- South Beach
- Village Center
- South Bluff
- South Hills
- North Hills
- Valley

Is your utility service undergrounded? What involvement did you have, if any?

What aspects of being on the Utility Undergrounding Advisory Committee most interest you?

Thank you for completing the Citizen Interest Form. Is there anything else you would like to add to your application for the City Council to consider?

IV. SIGNATURE AND ACKNOWLEDGEMENT

Please review the important information below before signing and submitting your application. Please note that recommendations for appointments to City advisory committees (other than the Planning Commission and Design Review Board) are made by the [Council Liaisons to that Committee](#). The appointments are then placed on the consent calendar for consideration for approval by the full City Council at the next available City Council meeting. For reasons of privacy, the individual candidates are not discussed at the meeting.

Additionally, the Del Mar Conflict of Interest Code requires that members of the Design Review Board, Planning Commission, and Finance Committee file Conflict of Interest Statements with the Administrative Services Department in conformance with the Fair Political Practices Commission and the City's Conflict of Interest Code. Other advisory committee members are not required to file Conflict of Interest Statements.

By signing below, you are acknowledging that you have reviewed the Committee webpage for which you are applying and that you understand the conflict of interest filing requirement, if applicable. Part of your service may include ethics and anti-harassment training upon appointment and bi-annually. Visit the [City's Conflict of Interest Code](#) webpage to learn more about the requirement.

By submitting this application, you are signing under penalty of perjury that the information you are providing, is true and correct to the best of your knowledge.

Signature

5/4/2023

Date

Within three (3) business days you will receive a confirmation email that your application is received. If you have questions, please email cityclerk@delmar.ca.us or call (858) 755-9313 and a staff member will get back to you promptly.

DEL MAR CITIZEN INTEREST FORM

MAY 16 2023

I. APPLICANT INFORMATION

CITY OF DEL MAR

<u>Barnouw</u> Last Name	<u>Jeffrey</u> First Name	<u></u> Middle Initial
<u>[REDACTED]</u> Home Street Address	<u>Del Mar, CA</u> City, State	
<u>[REDACTED]</u> Business Street Address (if applicable)	<u></u> City, State	
<u>[REDACTED]</u> Home Phone Number	<u>[REDACTED]</u> Business Phone Number	<u>[REDACTED]</u> E-mail Address

II. APPLICATION DETAILS

I am interested in serving on the following Committees, Board(s) or Commission(s) in order of preference (indicate 1st, 2nd choice, etc.):

- | | |
|--|---|
| <input type="checkbox"/> Design Review Board | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Arts Advisory Committee | <input type="checkbox"/> Parks and Recreation Committee |
| <input type="checkbox"/> Finance Committee | <input type="checkbox"/> Traffic and Parking Advisory Committee |
| <input type="checkbox"/> Measure Q Citizen Oversight Committee | <input checked="" type="checkbox"/> Lagoon Committee |
| <input type="checkbox"/> Other(s) (please indicate): _____ | <input type="checkbox"/> Sustainability Advisory Committee |

Qualifications for appointment and/or reasons for application (attach additional pages as needed):

I served two terms on the Lagoon Committee starting in 2012.
 I volunteer in several capacities with the San Dieguito River Park. For many years I was a Dust Devil (trail maintenance) on the Lagoon Trail. I was Chair of the Citizens Advisory Committee of the Joint Powers Authority of the Park for 6 years from 2016. I am currently the Vice Chair. As Chair I was on the Board of the JPA for 6 years and am currently an alternate and have served when the Chair was not available.
 I have written many articles on the Park and the Lagoon for the Del Mar Sandpiper.
 I contributed research on the Lake Hodges Dam for its 100th anniversary celebration as Vice President of the Historical Society.
 I volunteer regularly with Del Mar Community Connections and was on their Board for 6 years. I am currently on the Board of the Del Mar Foundation, and Chair of the Cultural Arts Committee, which is responsible for the First Thursdays Concert series.
 I am eager to continue contributing to the welfare of the Park and Lagoon.

Education:

Yale BA 1963, PhD 1969

I also studied in Germany and France as an undergraduate and graduate student, Berlin, Tuebingen and Paris

Relevant Experience (job or volunteer etc.):

See above under 'Qualifications'

I was Dean of Calhoun College (a residential college within Yale College) 1966-69

I was a Professor of Comparative Literature at UCSD 1969-1977 and at the University of Texas at Austin 1984-2011.

I have also taught in Germany and France, Tuebingen, Munich, Paris, Toulouse, Lyon

Name all of the Del Mar Committees/Boards/Commissions that you now serve on:

None

Please name all the Boards/Commissions/Committee/Task Forces that you have served on in the past, and if you can, the dates of your service:

Lagoon Committee 2012-2018

Optional: Please list three Del Mar residents who can provide a reference:

NAME	STREET NAME (no house number)	Phone Number
Bud Emerson	Klish Way	[REDACTED]
Larry Brooks	9 th Street	
Dwight Worden	Seaview	

Residency

	Month	Year
I have been a resident of California since:	August	1969
I have been a resident of San Diego County since:	August	1969
I have been a resident of Del Mar since:	January	1970

Are you a full-time or part-time resident of Del Mar?

X Full-time

Attachment A

Is Del Mar your primary place of residence?

X Yes

No

Are you a registered voter in Del Mar?

X Yes

No

III. COMMITTEE SPECIFIC QUESTIONS

The following are additional questions related to specific committees. Please answer the questions only for the committee(s) you are applying for.

1. Arts Advisory Committee

Membership on the Arts Advisory Committee is set by category. Which membership category do you best fit in? Select all that apply. (Note that City staff, consultants, and vendors are precluded from serving on the Arts Advisory Committee.)

- Resident with an art background
- Resident without an art background
- Business Owner- Art related business
- Del Mar Foundation Representative
- Del Mar Village Association Representative
- Ex-Officio (non-voting) – with Art related expertise
- Other (please explain): _____

Describe your experience and skills as they relate to the world of community art and fine art.

Why in your opinion is public art valuable to the Del Mar community?

What is your public art philosophy?

2. Finance Committee

The Finance Committee is looking for applicants with financial expertise and background.

Please describe your experience reviewing financial reports, conducting financial studies or any related experience. Please include any experience specific to public entities.

What aspects of the City's finances most interest you and why?

3. Measure Q Citizen Oversight Committee

Membership on the Measure Q Citizen Oversight Committee is set by category. To avoid conflicts of interest, members of the Measure Q Citizen Oversight Committee cannot concurrently serve on the Undergrounding Project Advisory Committee. Which membership category do you best fit in? (Select all that apply)

- Current (or within past 5 years) Finance Committee Member
- Business Community Member
- At-large Resident Member
- Other (please explain): _____

4. Traffic and Parking Advisory Committee

Which membership category do you best fit in? (Select all that apply)

- Business representative (can be a non-resident)
- Resident
- Other (please explain): _____

What part of town do you live in? Geographic diversity is desirable and will be taken into account. Check the [neighborhood map](#) to verify your neighborhood.

- | | |
|----------------|-------------|
| North Bluff | South Bluff |
| North Beach | South Hills |
| South Beach | North Hills |
| Village Center | Valley |

Do you have any special expertise or experience related to traffic and parking? If yes, please explain:

5. Parks and Recreation Committee

The Parks and Recreation Committee is looking for applicants with an interest in the City's parks and open spaces.

Please describe your personal or professional experience related to parks, open spaces, trails, public recreation or any similar experience.

What aspects of the City's parks and recreation most interest you and why?

6. Lagoon Committee

The Lagoon Committee is looking for applicants interested in the preservation of the lagoon and surrounding area. Attachment A

What aspect(s) of being on the Lagoon Committee most interest you and why?

I am concerned with and for the flourishing of the Lagoon, which is ailing. I want to advance the state of the Park as a whole tending toward the completion of the Coast to Crest Trail. The Reach the Beach segment is among the serious challenges.

7. Shores Advisory Committee

The Shores Advisory Committee is looking for applicants interested in the Shores Park property and planning process.

What aspects of being on the Shores Advisory Committee most interest you and why?

Please describe your vision for the future of Shores Park.

8. Sustainability Advisory Committee

The Sustainability Advisory Committee members are community leaders on environmental issues.

In what ways would you like to contribute to a more sustainable world either in your personal life or on a broader community level?

Please describe any outreach or public education efforts you have participated in related to environmental issues or in other areas. Do you have skills or experience in outreach that you could bring to the Sustainability Advisory Committee?

9. Undergrounding Project Advisory Committee

The Undergrounding Project Advisory Committee is seeking applicants with an interest in the citywide undergrounding project. To avoid conflicts of interest, members of the Undergrounding Project Advisory Committee cannot concurrently serve on the Measure Q Citizen Oversight Committee.

Geographic diversity is desirable and will be taken into account. What part of town do you live in? Check the [neighborhood map](#) to verify your neighborhood.

- North Bluff
- South Beach
- South Bluff
- North Hills
- North Beach
- Village Center
- South Hills
- Valley

Is your utility service undergrounded? What involvement did you have, if any? Attachment A

[Empty text box for utility service information]

What aspects of being on the Utility Undergrounding Advisory Committee most interest you?

[Empty text box for aspects of interest]

Thank you for completing the Citizen Interest Form. Is there anything else you would like to add to your application for the City Council to consider?

[Empty text box for additional comments]

IV. SIGNATURE AND ACKNOWLEDGEMENT

Please review the important information below before signing and submitting your application. Please note that recommendations for appointments to City advisory committees (other than the Planning Commission and Design Review Board) are made by the [Council Liaisons to that Committee](#). The appointments are then placed on the consent calendar for consideration for approval by the full City Council at the next available City Council meeting. For reasons of privacy, the individual candidates are not discussed at the meeting.

Additionally, the Del Mar Conflict of Interest Code requires that members of the Design Review Board, Planning Commission, and Finance Committee file Conflict of Interest Statements with the Administrative Services Department in conformance with the Fair Political Practices Commission and the City's Conflict of Interest Code. Other advisory committee members are not required to file Conflict of Interest Statements.

By signing below, you are acknowledging that you have reviewed the Committee webpage for which you are applying and that you understand the conflict of interest filing requirement, if applicable. Part of your service may include ethics and anti-harassment training upon appointment and bi-annually. Visit the [City's Conflict of Interest Code](#) webpage to learn more about the requirement.

By submitting this application, you are signing under penalty of perjury that the information you are providing, is true and correct to the best of your knowledge.

Jeffrey Barnouw

[Redacted signature]

Signature


Date *May 15, 2023*


Within three (3) business days you will receive a confirmation email that your application is received. If you have questions, please email cityclerk@delmar.ca.us or call (858) 755-9313 and a staff member will get back to you promptly.




City of Del Mar
Lagoon Committee


Board Roster


 **Bill Michalsky**
1st Term Jun 17, 2019 - Jun 30, 2023
Appointing Authority City Council
Position Voting Member

 **Geoffrey I Criqui**
1st Term Oct 07, 2019 - Oct 31, 2023
Appointing Authority City Council
Position Voting Member

 **Udo Wahn**
1st Term May 17, 2021 - Oct 31, 2023
Appointing Authority City Council
Position Voting Member

 **Jill E. Gartman**
1st Term Nov 19, 2019 - Nov 19, 2023
Appointing Authority City Council
Position Chair

 **Robert B Chase**
1st Term Oct 19, 2020 - Oct 19, 2024
Appointing Authority City Council
Position Voting Member

 **Carol Kerridge**
2nd Term Feb 07, 2022 - Feb 28, 2025
Appointing Authority City Council
Position Voting Member



Karen F Lare

2nd Term Oct 18, 2022 - Oct 31, 2025

Appointing Authority City Council

Position Secretary

Office/Role Secretary



Julie Kawasaki

2nd Term Feb 01, 2023 - Feb 28, 2026

Position Voting Member



Donna Shaw

2nd Term Apr 01, 2023 - Apr 30, 2026

Appointing Authority City Council

Position At-Large Member (Non-Voting)



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Councilmembers Dave Druker and Dwight Worden,
Human Resources Subcommittee of the City Council

DATE: June 5, 2023

SUBJECT: Recommended Compensation Adjustment Related to the City Manager's
Performance Evaluation

REQUESTED ACTION/RECOMMENDATION:

The City Council Human Resources Subcommittee recommends that the City Council adopt the Resolution (Attachment A) approving changes to the City Manager's compensation effective December 13, 2022, and updating the Management, Professional, Confidential salary schedule to reflect those changes (Exhibit A to Attachment A).

DISCUSSION/ANALYSIS:

The City Council began the annual process for evaluating the City Manager in April 2023. As part of the evaluation process, the City Council met as a group during closed session to review and discuss the City Manager's performance for the period December 13, 2021, through December 13, 2022. Through this collaborative effort, the City Council concluded that the City Manager's overall performance was highly favorable and met the City Council's expectations.

Below are some examples of the City Manager's significant accomplishments during the evaluation period:

- Recruitment, retention, and development of highly qualified and motivated staff, including hiring of a new Planning & Development Director and Assistant City Manager among other key staffing positions in the City.
- Maintained a strong and cohesive organizational work culture that is appreciated by employees and has produced a high-volume of quality work citywide.
- Achieved significant progress on the completion of several important capital improvement projects for the City including design and permitting for the Riverpath Phase 3, completion of the Tot Lot replacement, design of the Undergrounding Districts 1A and X1A, and completion of the Tewa Undergrounding project.

City Council Action:

- Made significant progress or completed several important special projects for the City including efforts toward the development of affordable housing at the Fairgrounds and Re-Adoption of the City's Housing Element.
- Maintained a balanced Operating and Capital Budget for Fiscal Year 2021-2022 while working to economically recover from the pandemic, and managed resources in an efficient manner resulting in a \$1.1 million higher ending General Fund Contingency.
- The City Manager's financial management skills has contributed to the City being in a strong financial position in FY 2022-23, following a few years of significant negative impacts of the COVID-19 pandemic.
- Successfully obtained millions of dollars in local, State and federal grant funds to support important capital and special projects in Del Mar.
- Negotiated a new labor agreement with the City's general employees.
- Continued to build strong working relationships with staff; the City Council; leadership at outside agencies such as the San Diego Association of Governments, North County Transit District, and California Coastal Connections, as well as city leaders throughout the County; and most importantly the Del Mar community. Members of the City Council consistently receive positive feedback from the community and others regarding the City Manager's performance.

As part of the standard annual evaluation process, Human Resources staff conducted a market analysis of city managers salaries across the San Diego region. Based on the results of this research, the City of Del Mar City Manager's pay is approximately 9% below the regional median. The City Council's compensation philosophy is to target salaries for all employees between 5-7% of the median.

Additionally, Section 7(c) of the City Manager's employment agreement provides that:

Upon satisfactory performance, the City Council shall adjust the Manager's compensation annually ("Annual Adjustment"), which will be based upon the San Diego Regional Consumer Price Index (CPI) as reported by the Bureau of Labor Statistics and regional compensation data, in an amount generally not less than 3% (unless CPI is less than 3%, in which case the increase may be less, consistent with CPI) nor more than 5% (even if CPI exceeds 5%). The City Council has the discretion to implement the Annual Adjustment as a base salary adjustment, one-time bonus, or a combination thereof. The Annual Adjustment will take place annually on Manager's anniversary date (December 13), and shall be subject to taxes and other required withholdings.

Based on the City Manager's performance, and regional compensation and CPI data, the Human Resources subcommittee is recommending a 3% base salary increase for the City

Manager, which would be retroactively approved to December 13, 2022, are required by the City Manager's employment agreement.

FISCAL IMPACT:

Approval of this item will have a \$4,200 fiscal impact to the FY 2022-2023 Operating Budget. However, there is no fiscal action to be taken by the City Council related to this agenda item, as sufficient funds are available in the current fiscal year budget. Funds for all employee salaries, including the City Manager, are included in the proposed FY 2023-24 and FY 2024-25 Operating and Capital Budget to be considered by the City Council on June 19, 2023.

ENVIRONMENTAL REVIEW:

The proposed City Council action does not constitute a "project" under the definition set forth in the California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

This is an operational item and not included on the City Council's list of Goals and Priorities.

ATTACHMENTS:

Attachment A – Resolution Authorizing Compensation Adjustment for City Manager
Exhibit A to Attachment A – Amended Management, Professional, Confidential Salary
Schedule

RESOLUTION NO. 2023-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AUTHORIZING COMPENSATION ADJUSTMENT FOR ASHLEY JONES AS CITY MANAGER FOR THE CITY OF DEL MAR AND ADOPTING THE AMENDED MANAGEMENT, PROFESSIONAL, AND CONFIDENTIAL SALARY SCHEDULE

WHEREAS, on December 13, 2021, the City, by and through its City Council, appointed Ashley Jones (“City Manager”) to serve as City Manager for the City of Del Mar and entered into an agreement with City Manager for such services (the “Agreement”); and

WHEREAS, the Agreement requires that at least annually the City Council conduct an evaluation of the City Manager’s performance; and

WHEREAS, the Agreement requires that upon satisfactory performance, the City Council shall adjust the City Manager’s compensation annually, based upon regional salary data and the San Diego Regional Consumer Price Index (CPI) in the amount generally not less than 3% nor more than 5%; and

WHEREAS, through the performance evaluation process, which began in April 2023, the City Council determined that the City Manager’s overall performance for period December 13, 2021 through December 13, 2022, was highly favorable and met the City Council’s expectations.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar, California, that the City Council hereby approves the following:

Section 1: The City Council of the City of Del Mar hereby approves a 3% compensation adjustment to the City Manager’s current base salary, effective December 13, 2022, as provided for in Section 7.C of the employment Agreement;

Section 2: The City Council adopts the amended Management, Professional, and Confidential salary schedule as shown in Exhibit A to this resolution.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, California, at a Regular Meeting held the 5th day of June, 2023.

Tracy Martinez, Mayor
City of Del Mar

Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, NESTOR MACHADO, Acting City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution 2023-XX, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 5th day of June, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Nestor Machado, Acting City Clerk
City of Del Mar

**CITY OF DEL MAR
MANAGEMENT AND PROFESSIONAL COMPENSATION PLAN
SALARY INCREASE 2.0%**

EFFECTIVE JULY 1, 2022

POSITION TITLE	RANGE	ANNUAL SALARY	
City Manager*	M500	Contract	247,200.00
Assistant City Manager	M900	157,825.76 -	207,081.07
Department Directors	M850	140,915.85 -	184,893.81
Deputy Directors/Managers	M800	110,482.63 -	144,962.79
Finance Officer	M780	101,068.92 -	132,611.20
Information Technology Manager II	P287	98,878.05 -	129,736.57
Public Works Operations Manager II	P287	98,878.05 -	129,736.57
Maintenance & Construction Superintendent II	P276	88,626.74 -	116,285.97
Associate Engineer	P276	88,626.74 -	116,285.97
Information Technology Manager I	P274	86,880.44 -	113,994.67
Senior Management Analyst	P274	86,880.44 -	113,994.67
Senior Planner	P274	86,880.44 -	113,994.67
Public Works Operations Manager I	P274	86,880.44 -	113,994.67
Maintenance & Construction Superintendent I	P269	82,663.76 -	108,462.02
Associate Management Analyst	P259	74,834.42 -	98,189.25
Associate Planner	P259	74,834.42 -	98,189.25
Facilities Supervisor	P249	67,746.63 -	88,889.45
Management Analyst	P244	64,458.60 -	84,575.27
Assistant Planner II	P244	64,458.60 -	84,575.27
Assistant Management Analyst	P233	57,775.77 -	75,806.82
Parking Enforcement Sergeant	P233	57,775.77 -	75,806.82
Lifeguard Sergeant	P233	57,775.77 -	75,806.82
Assistant Planner I	P229	55,521.37 -	72,848.85

*Amended on 6/5/2023 by Resolution 2023-XX

**CITY OF DEL MAR
MANAGEMENT AND PROFESSIONAL COMPENSATION PLAN
SALARY INCREASE 2.0%**

EFFECTIVE JULY 1, 2022

POSITION TITLE	Grade	A	B	C	D	E	F	G	H	I	J	K	L
Assistant City Manager	M900												
-Hourly		75,877.8	77,774.7	79,719.1	81,712.1	83,754.9	85,848.7	87,994.9	90,194.8	92,449.7	94,760.9	97,130.0	99,558.2
-Bi-Weekly		6,070.22	6,221.98	6,377.53	6,536.96	6,700.39	6,867.90	7,039.60	7,215.59	7,395.98	7,580.87	7,770.40	7,964.66
-Monthly		13,152.15	13,480.95	13,817.97	14,163.42	14,517.51	14,880.45	15,252.46	15,633.77	16,024.61	16,425.23	16,835.86	17,256.76
-Annual		157,825.76	161,771.40	165,815.69	169,961.08	174,210.11	178,565.36	183,029.49	187,605.23	192,295.36	197,102.75	202,030.32	207,081.07
Department Directors	M850												
-Hourly		67,748.0	69,441.7	71,177.7	72,957.2	74,781.1	76,650.6	78,566.9	80,531.1	82,544.4	84,608.0	86,723.2	88,891.3
-Bi-Weekly		5,419.84	5,555.34	5,694.22	5,836.58	5,982.49	6,132.05	6,285.35	6,442.49	6,603.55	6,768.64	6,937.85	7,111.30
-Monthly		11,742.99	12,036.56	12,337.48	12,645.91	12,962.06	13,286.11	13,618.27	13,958.72	14,307.69	14,665.38	15,032.02	15,407.82
-Annual		140,915.85	144,438.75	148,049.72	151,750.96	155,544.73	159,433.35	163,419.19	167,504.67	171,692.28	175,984.59	180,384.20	184,893.81
Deputy Directors/Managers*	M800												
-Hourly		53,116.7	54,444.6	55,805.7	57,200.8	58,630.8	60,096.6	61,599.0	63,139.0	64,717.5	66,335.4	67,993.8	69,693.6
-Bi-Weekly		4,249.33	4,355.57	4,464.45	4,576.07	4,690.47	4,807.73	4,927.92	5,051.12	5,177.40	5,306.83	5,439.50	5,575.49
-Monthly		9,206.89	9,437.06	9,672.98	9,914.81	10,162.68	10,416.75	10,677.17	10,944.09	11,217.70	11,498.14	11,785.59	12,080.23
-Annual		110,482.63	113,244.70	116,075.82	118,977.71	121,952.15	125,000.96	128,125.98	131,329.13	134,612.36	137,977.67	141,427.11	144,962.79
Finance Officer	M780												
Project Manager II													
-Hourly		48,590.8	49,805.6	51,050.7	52,327.0	53,635.2	54,976.1	56,350.5	57,759.2	59,203.2	60,683.3	62,200.4	63,755.4
-Bi-Weekly		3,887.27	3,984.45	4,084.06	4,186.16	4,290.82	4,398.09	4,508.04	4,620.74	4,736.26	4,854.66	4,976.03	5,100.43
-Monthly		8,422.41	8,632.97	8,848.80	9,070.02	9,296.77	9,529.19	9,767.41	10,011.60	10,261.89	10,518.44	10,781.40	11,050.93
-Annual		101,068.92	103,595.66	106,185.55	108,840.19	111,561.19	114,350.22	117,208.98	120,139.20	123,142.68	126,221.25	129,376.78	132,611.20
Information Technology Manager II	P287												
Public Works Operations Manager II													
-Hourly		47,537.5	48,726.0	49,944.1	51,192.7	52,472.5	53,784.3	55,129.0	56,507.2	57,919.9	59,367.9	60,852.1	62,373.4
-Bi-Weekly		3,803.00	3,898.08	3,995.53	4,095.42	4,197.80	4,302.75	4,410.32	4,520.57	4,633.59	4,749.43	4,868.16	4,989.87
-Monthly		8,239.84	8,445.83	8,656.98	8,873.40	9,095.24	9,322.62	9,555.69	9,794.58	10,039.44	10,290.43	10,547.69	10,811.38
-Annual		98,878.05	101,350.00	103,883.75	106,480.85	109,142.87	111,871.44	114,668.23	117,534.93	120,473.31	123,485.14	126,572.27	129,736.57
Maintenance & Construction Superintendent II	P276												
Project Manager I													
-Hourly		42,609.0	43,674.2	44,766.1	45,885.2	47,032.4	48,208.2	49,413.4	50,648.7	51,914.9	53,212.8	54,543.1	55,906.7
-Bi-Weekly		3,408.72	3,493.94	3,581.29	3,670.82	3,762.59	3,856.65	3,953.07	4,051.90	4,153.20	4,257.03	4,363.45	4,472.54
-Monthly		7,385.56	7,570.20	7,759.46	7,953.44	8,152.28	8,356.09	8,564.99	8,779.11	8,998.59	9,223.55	9,454.14	9,690.50
-Annual		88,626.74	90,842.41	93,113.47	95,441.31	97,827.34	100,273.02	102,779.85	105,349.35	107,983.08	110,682.66	113,449.72	116,285.97
Information Technology Manager I	P274												
Senior Management Analyst													
Senior Planner													
Public Works Operations Manager I													
-Hourly		41,769.4	42,813.7	43,884.0	44,981.1	46,105.7	47,258.3	48,439.7	49,650.7	50,892.0	52,164.3	53,468.4	54,805.1
-Bi-Weekly		3,341.56	3,425.09	3,510.72	3,598.49	3,688.45	3,780.66	3,875.18	3,972.06	4,071.36	4,173.14	4,277.47	4,384.41
-Monthly		7,240.04	7,421.04	7,606.56	7,796.73	7,991.65	8,191.44	8,396.22	8,606.13	8,821.28	9,041.81	9,267.86	9,499.56
-Annual		86,880.44	89,052.45	91,278.77	93,560.73	95,899.75	98,297.25	100,754.68	103,273.54	105,855.38	108,501.77	111,214.31	113,994.67

*** Deputy Directors/Managers**

- Deputy Chief Lifeguard/Community Services Director
- Principal Engineer
- Environmental Sustainability & Special Projects Manager
- Finance Manager/City Treasurer
- Principal Planner/Planning Manager
- Administrative Services Manager/City Clerk

CITY OF DEL MAR
 MANAGEMENT AND PROFESSIONAL COMPENSATION PLAN
 SALARY INCREASE 2.0%

EFFECTIVE JULY 1, 2022

POSITION TITLE	Grade	A	B	C	D	E	F	G	H	I	J	K	L
Maintenance & Construction Superintendent I	P269												
-Hourly		39,7422	40,7357	41,7541	42,7980	43,8679	44,9646	46,0888	47,2410	48,4220	49,6326	50,8734	52,1452
-Bi-Weekly		3,179.38	3,258.86	3,340.33	3,423.84	3,509.44	3,597.17	3,687.10	3,779.28	3,873.76	3,970.60	4,069.87	4,171.62
-Monthly		6,888.65	7,060.86	7,237.38	7,418.32	7,603.78	7,793.87	7,988.72	8,188.44	8,393.15	8,602.98	8,818.05	9,038.50
-Annual		82,663.76	84,730.35	86,848.61	89,019.83	91,245.32	93,526.46	95,864.62	98,261.23	100,717.76	103,235.71	105,816.60	108,462.02
Associate Management Analyst	P259												
Associate Planner													
-Hourly		35,9781	36,8775	37,7995	38,7445	39,7131	40,7059	41,7236	42,7666	43,8358	44,9317	46,0550	47,2064
-Bi-Weekly		2,878.25	2,950.20	3,023.96	3,099.56	3,177.05	3,256.47	3,337.88	3,421.33	3,506.86	3,594.54	3,684.40	3,776.51
-Monthly		6,236.20	6,392.11	6,551.91	6,715.71	6,883.60	7,055.69	7,232.08	7,412.88	7,598.21	7,788.16	7,982.87	8,182.44
-Annual		74,834.42	76,705.28	78,622.92	80,588.49	82,603.20	84,668.28	86,784.99	88,954.61	91,178.48	93,457.94	95,794.39	98,189.25
Facilities Supervisor	P249												
-Hourly		32,5705	33,3848	34,2194	35,0749	35,9517	36,8505	37,7718	38,7161	39,6840	40,6761	41,6930	42,7353
-Bi-Weekly		2,605.64	2,670.78	2,737.55	2,805.99	2,876.14	2,948.04	3,021.74	3,097.29	3,174.72	3,254.09	3,335.44	3,418.83
-Monthly		5,645.55	5,786.69	5,931.36	6,079.64	6,231.63	6,387.42	6,547.11	6,710.79	6,878.56	7,050.52	7,226.78	7,407.45
-Annual		67,746.63	69,440.30	71,176.30	72,955.71	74,779.60	76,649.09	78,565.32	80,529.45	82,542.69	84,606.26	86,721.42	88,889.45
Management Analyst	P244												
Assistant Planner II													
-Hourly		30,9897	31,7645	32,5586	33,3725	34,2068	35,0620	35,9386	36,8370	37,7580	38,7019	39,6695	40,6612
-Bi-Weekly		2,479.18	2,541.16	2,604.69	2,669.80	2,736.55	2,804.96	2,875.09	2,946.96	3,020.64	3,096.15	3,173.56	3,252.89
-Monthly		5,371.55	5,505.84	5,643.48	5,784.57	5,929.19	6,077.42	6,229.35	6,385.08	6,544.71	6,708.33	6,876.04	7,047.94
-Annual		64,458.60	66,070.06	67,721.82	69,414.86	71,150.23	72,928.99	74,752.21	76,621.02	78,536.54	80,499.96	82,512.46	84,575.27
Assistant Management Analyst	P233												
Parking Enforcement Sergeant													
Lifeguard Sergeant													
-Hourly		27,7768	28,4712	29,1830	29,9126	30,6604	31,4269	32,2126	33,0179	33,8433	34,6894	35,5567	36,4456
-Bi-Weekly		2,222.15	2,277.70	2,334.64	2,393.01	2,452.83	2,514.15	2,577.01	2,641.43	2,707.47	2,775.15	2,844.53	2,915.65
-Monthly		4,814.65	4,935.01	5,058.39	5,184.85	5,314.47	5,447.33	5,583.52	5,723.10	5,866.18	6,012.84	6,163.16	6,317.23
-Annual		57,775.77	59,220.17	60,700.67	62,218.19	63,773.64	65,367.98	67,002.18	68,677.24	70,394.17	72,154.02	73,957.87	75,806.82
Assistant Planner I	P229												
-Hourly		26,6930	27,3603	28,0443	28,7454	29,4640	30,2006	30,9557	31,7295	32,5228	33,3359	34,1693	35,0235
-Bi-Weekly		2,135.44	2,188.82	2,243.54	2,299.63	2,357.12	2,416.05	2,476.45	2,538.36	2,601.82	2,666.87	2,733.54	2,801.88
-Monthly		4,626.78	4,742.45	4,861.01	4,982.54	5,107.10	5,234.78	5,365.65	5,499.79	5,637.28	5,778.22	5,922.67	6,070.74
-Annual		55,521.37	56,909.40	58,332.14	59,790.44	61,285.20	62,817.33	64,387.77	65,997.46	67,647.40	69,338.58	71,072.05	72,848.85



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Joe Bride, Public Works Director
Karen Falk, Principal Engineer
Mariel Cairns, Management Analyst
Via Ashley Jones, City Manager

DATE: June 5, 2023

SUBJECT: Adoption of Water Shortage Contingency Plan and Introduction of an Ordinance Amending Chapter 21.70 of the Del Mar Municipal Code to Revise Emergency Water Management Water Shortage Response Levels

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council: 1) Adopt the City's Water Shortage Contingency Plan (WSCP) (Attachment A) and authorize future administrative updates via the City Manager; and 2) Hold a public hearing and introduce an Ordinance (Attachment B) amending the Del Mar Municipal Code (DMMC) Chapter 21.70 to revise water shortage responses to align with the six standard water shortage levels as required by the California Water Code.

BACKGROUND:

Prior to the recent 2023 winter storms, California experienced over three consecutive years of extreme drought, and water reservoirs throughout the state were at record low levels. In October 2021, Governor Gavin Newsom issued a proclamation extending the drought emergency statewide, including San Diego County.

In support of the State's declared emergency drought, the San Diego County Water Authority (Water Authority) Board of Directors formally activated its WSCP to Level 1 on October 28, 2021. Level 1 response actions included ongoing voluntary water-use efficiency measures and implementation of the WSCP's communication plan.

On May 24, 2022, the State Water Resources Control Board responded to another drought related executive order from the Governor by requiring water suppliers to implement Level 2 Demand Reduction Measures as identified in the supplier's WSCP.

The City of Del Mar has been in a Drought Response Stage 1 – Drought Watch Condition since 2016, which remains in effect. In response to the State Water Resources Control

City Council Action:

Board and the Water Authority's directives, the City Council reaffirmed Drought Response Stage 1 on July 11, 2022, to continue to be in effect and urged citizens and business to continue voluntary activities to conserve water by following water demand reduction measures as outlined in Section 21.70.110 of the DMMC.

On March 24, 2023, considering recent winter storms that brought historical rainfall and snowpack levels throughout the state, Governor Newsom issued a new Executive Order N-5-23 to rollback major elements of prior emergency orders related to water restrictions. Although the recent extraordinary amounts of precipitation have eased drought conditions, long-term water supply continues to remain a concern throughout California.

DISCUSSION/ANALYSIS:

Water Shortage Contingency Plan Adoption

Historically, as a small water supplier with approximately 1,860 service connections, the City of Del Mar was not required to prepare its own WSCP. Instead, the City relied on the Water Authority's WSCP for guidance related to water conservation and demand reduction measures. However, on September 23, 2021, Senate Bill (SB) 552 was passed to require small water suppliers serving 1,000 to 2,999 service connections to develop and maintain their own abridged WSCP that would include specified proactive water shortage planning elements by July 1, 2023.

In accordance with State requirements, staff developed the City's WSCP (Attachment A) that migrates the City from previously named "drought response stages" to the six (6) standard water shortage levels as defined by the California Water Code Section 10632. Staff recommends that the City Council adopt the proposed WSCP in order to comply with statutory requirements. The City will continue to coordinate with the Water Authority and its member agencies and follow the Water Authority's Communication Plan (Appendix A to Attachment A) in order to efficiently communicate water shortage concerns to our customers.

DMMC Emergency Water Management Amendment

The DMMC Chapter 21.70 on Emergency Water Management currently defines four Drought Response Stages. As written, sections of DMMC are not consistent with the State code and the proposed WSCP and need revision. Approval of the attached ordinance (Attachment B) is required to amend the DMMC to align with State and County defined water shortage levels (Level 1 through 6) and with the City's WSCP. The proposed DMMC redlined changes are included in this report for the Council's reference as Attachment C.

Although major water restriction requirements were rolled back with the Governor's latest Executive Order, all 58 counties in the State still retain a state of emergency to allow drought response and recovery activities to continue. Along with the amendment of DMMC Chapter 21.70, City staff updated the City's Water Conservation webpage to comply with the Water Authority's Communication Plan, which is an element of the

WSCP. Pursuant to the Water Authority’s Communication Plan, the City will increase public communication activities to Del Mar’s water users by publishing electronic newsletters, periodically updating the website’s drought information, administering water waste reporting applications, and providing educational information to encourage water conservation.

PRIOR CITY COUNCIL REVIEW:

On July 11, 2022, the City Council adopted Resolution No. 2022-51 reaffirming Drought Response Stage 1 and encouraging continued voluntary adherence with water demand reduction measures; and adopted Ordinance No. 991 to amend DMMC Sections 21.70.110 and 21.70.120 to revise Drought Watch and Alert Conditions.

On December 13, 2021, the City Council adopted Ordinance No. 984 to amend DMMC Section 21.70.110 to revise consumer demand requirements in accordance with recent State and County actions.

On July 5, 2016, the City Council adopted Resolution No. 2016-42 declaring Drought Response Stage 1 – Drought Watch to be in effect but urging citizens and businesses to continue voluntary efforts to conserve water by following measures adopted during the Stage 2 response in 2015-2016.

FISCAL IMPACT:

There is no fiscal impact or action to be taken by the Council related to this agenda item.

ENVIRONMENTAL IMPACT:

The proposed City Council action does not constitute a “project” under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

ATTACHMENTS:

- Attachment A – Water Shortage Contingency Plan
 - Appendix A to Attachment A – Water Authority WSCP Communications Plan
- Attachment B – Ordinance Amending DMMC Chapter 21.70
 - Exhibit A to Attachment B – Amended DMMC Chapter 21.70
- Attachment C – Redlined changes in DMMC Chapter 21.70



Water Shortage Contingency Plan

CITY OF DEL MAR

1050 Camino Del Mar

Del Mar, CA 92014

Public Water System CA #3710004

Public Review Draft: June 5, 2023

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Section 1: Introduction and Overview

In order to conserve the available water supply and protect the integrity of public water system (PWS) supply facilities for domestic water use, sanitation, and fire protection, the City of Del Mar has established regulations and restrictions on the delivery and consumption of water during varying water supply conditions through this Water Shortage Contingency Plan (WSCP). The WSCP is intended to protect and preserve public health, welfare, safety, and minimize adverse impacts during a water supply shortage or emergency condition.

Under [Senate Bill 552 \(SB 552\)](#), passed and signed by Governor Gavin Newsom in September 2021, State and local governments will share the responsibility in preparing and acting in the case of a water shortage event. These new requirements are expected to improve the ability of Californians to manage future droughts and help prevent catastrophic impacts on drinking water for communities vulnerable to impacts of climate change. The bill requires small water suppliers to implement more proactive drought planning and be better prepared for future water shortage events or dry years.

SB 552 requires small water suppliers - defined as those with fewer than 3,000 connections and/or serve fewer than 3,000 acre feet per year - to have an abridged water shortage contingency plan, annually report their water supply conditions and monthly usage, and upgrade their infrastructure to drought resilient standards, if needed.

The City of Del Mar provides potable water to approximately 1,890 water connections serving an estimated population of 4,000 people within the City boundary. The City is bordered to the north by Solana Beach, served by Santa Fe Irrigation District, and to the east and south by the City of San Diego.

Section 2: Public Involvement

The City held a public hearing to receive public comments on this WSCP at its City Council meeting on June 5, 2023. At the same time, the City introduced Ordinance XXX to update the Del Mar Municipal Code (DMMC) Chapter 21.70 on Emergency Water Management to align with this WSCP. Final adoption of the Ordinance is proposed to occur at a properly noticed City Council meeting on June 19, 2023.

Section 3: Coordination with San Diego County Water Authority

The service area of the City of Del Mar is located within the San Diego County Water Authority (Water Authority) regional water planning area. The Water Authority adopted its 2020 WSCP on May 27, 2021. A copy of this document can be found at <https://www.sdcwa.org/wp-content/uploads/2021/08/SDCWA-WSCP-05272021-rev-July-2021-1.pdf>. The City's water demand is included in regional planning efforts completed by the Water Authority and its WSCP was considered in the development of this document.

Section 4: Declaration of Water Shortage Level

DMMC Section 21.04.180 authorizes the City Manager to determine and declare that a water shortage emergency exists in any or all parts of the City. DMMC Section 21.70.040 further defines when and how the City Manager or City Council can declare a water shortage emergency and notify the public. During such an emergency, the applicable provisions of this WSCP will be implemented when necessary to protect public health, safety, and welfare.

The City Manager, or designee, shall monitor water supply and/or demand conditions on a monthly basis and shall determine when triggers are reached by conditions that warrant initiation or termination of each level of the WSCP. The triggering and termination criteria considered shall include:

- Water Authority Board of Directors has changed its water shortage response level.
- County, State, or Federal Drought Emergency Orders are issued.
- Emergencies such as fire, earthquake, etc. occur, resulting in actual or potential water outages.

Section 5: Water Shortage Response Levels

Water shortage is the gap between available supply and planned demands. To provide a consistent regional and statewide approach to conveying the relative severity of water supply shortage conditions, the 2018 Water Conservation Legislation (SB 606 and AB 1668) mandates that water suppliers plan for six standard water shortage levels. These six levels progressively increase from a shortage of 10%, 20%, 30%, 40%, 50%, and greater than 50% shortage and become increasingly stringent water use restrictions.

The City of Del Mar previously established four drought response stages detailing demand management measures for each stage in DMMC Sections 21.70.110 through 21.70.140. Pursuant to legislation that was adopted in response to recent severe droughts, the City of Del Mar is updating its Municipal Code to move from four to six standard water shortage response levels.

Shortage Level	Water Shortage Range	Response Action
1 – Watch	Up to 10%	Voluntary
2 – Warning	Up to 20%	Mandatory
3 – Acute	Up to 30%	Mandatory
4 – Critical	Up to 40%	Mandatory
5 – Emergency	Up to 50%	Mandatory
6 – Catastrophic	> 50%	Mandatory

When the City declares that a shortage level is in effect, customers must comply with all regulations contained in the declared level or face a potential penalty. Details of the levels and specifics on what is prohibited under each level are summarized in this section and DMMC. The percentage reduction is calculated and evaluated versus the base year, which the Water Authority establishes for the region based on recent water demand and sources available.

Emergency regulations and other conditions as may be identified by the Governor, State of California, or the Water Authority may require additional mandatory water conservation measures.

WATER SHORTAGE LEVEL 1: WATCH Condition

Target: Achieve a voluntary 10% percent reduction

Level 1 may apply when there is a reasonable probability that there will be water supply shortages and that a consumer demand reduction of up to 10% is required. At this level, restrictions are voluntary, and the City would increase its public education and outreach efforts to encourage customers to take actions to conserve water. Detailed requirements are detailed in DMMC Section 21.70.110.

Some voluntary measures under Level 1 include requests for all persons to:

- Stop hosing down paved surfaces
- Stop water waste and runoff from landscape irrigation
- Water before 10 a.m. and after 6 p.m. three times per week, and not within 48 hours of measurable rainfall
- Wash vehicles with a hand-held hose/shut-off nozzle or at a commercial site with recirculated water
- Provide restaurant water refills and hotel laundering only upon request
- Repair all leaks within 72 hours of notification
- Use recirculated water to operate ornamental fountains
- Use non-potable water for construction purposes when available.

Landscape irrigation restrictions do not apply to micro-irrigation systems such as drip irrigation.

WATER SHORTAGE LEVEL 2: WARNING Condition

Target: Achieve a 20% percent reduction

Level 2 may apply when a consumer demand reduction of up to 20% is necessary. At this level, all the voluntary water use reduction measures in Level 1 become mandatory and additional mandatory water use restrictions may be implemented. Under Level 2 conditions, the City may also implement drought rates at Level 2 as identified in DMMC Section 21.70.120.

WATER SHORTAGE LEVEL 3: ACUTE Condition

Target: Achieve a 30% percent reduction

Level 3 represents an increased shortage up to 30% due to drought or other supply reductions. At this level, Level 1 and Level 2 restrictions apply and additional mandatory prohibitions are established. Additional mandatory actions established under Level 3 include:

- Further limiting landscape irrigation to two (2) assigned days per week (no more than once per week November through May)
- Requiring leak repair within 48 hours of notification
- Stopping all vehicle washing except at commercial car washes that recirculate water.

Landscape irrigation restrictions do not apply to micro-irrigation systems such as drip irrigation.

Under Level 3 conditions, The City may also implement drought rates as identified in DMMC Section 21.70.130.

WATER SHORTAGE LEVEL 4: CRITICAL Condition

Target: Achieve a 40% percent reduction

Level 4 represents an increased shortage up to 40% due to drought or other supply reductions. At this level, Level 1, 2, and 3 restrictions apply, and additional mandatory prohibitions are established.

Under Level 4 conditions, the City may also implement drought rates as identified in DMMC Section 21.70.140.

WATER SHORTAGE LEVEL 5: EMERGENCY Condition

Target: Achieve a 50% Percent Reduction

Level 5 represents an increased shortage up to 50% due to drought or other supply reductions. At this level, Level 1, 2, 3, and 4 restrictions apply, and additional mandatory prohibitions will be established by the City Council and implemented.

WATER SHORTAGE LEVEL 6: CATASTROPHIC Condition

Target: Achieve a Greater Than 50% Percent Reduction

Level 6 represents an increased shortage of greater than 50% due to drought or other supply reductions. At this level, Level 1, 2, 3, 4, and 5 restrictions apply, and additional

mandatory prohibitions will be established by the City Council and implemented.

Section 6: Communication Plan

The City of Del Mar will regularly provide the public with information about drought conditions and the drought response measures to be implemented in each level. These communication efforts will include, but not be limited to:

- Notice on City website and social media outlets
- Notice in local newspaper, joint messaging with the Water Authority in regional newspapers
- Notice to local Spanish and English-speaking radio stations
- Email to utility customer listing
- Direct Mail to each utility customer, in bill or flyer format
- County Emergency Messaging text alert

Additionally, the City will coordinate with the Water Authority and its member agencies to efficiently communicate drought concerns to the region. The Water Authority Communication Plan is included as Appendix A as a reference.

Section 7: Appeals

Pursuant to DMMC Section 21.70.050, the City Council may grant a temporary variance for existing water uses prohibited under this Plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance.

Section 8: Enforcement

No person shall knowingly or intentionally use water in a manner contrary to any provision of this WSCP or the Del Mar Municipal Code. DMMC Section 21.04.090 establishes enforcement parameters for those that violate conditions established by Section 5 of the WSCP or DMMC.

Section 9: Contact Information

City of Del Mar Contacts	Name & Position	Telephone	Email
Public Works Department	Joe Bride, Department Director	858-704-3681	jbride@delmar.ca.us
Public Works Department	Karen Falk, Principal Engineer	858-375-9533	kfalk@delmar.ca.us
Public Works Department	Peter Kiefer, Superintendent	858-704-3676	pkiefer@delmar.ca.us
Public Works Department	Mariel Cairns, Management Analyst	858-704-3677	mcairns@delmar.ca.us

Public Safety Contacts: The City Manager, or designee, shall notify directly the following individuals and entities of restrictions and water shortages, as defined in the subsections below, as appropriate for each response level.

Organization or Department	Name & Position	Telephone	Email
Fire Department	Josh Gorgon, Fire Chief	911 or (non-emergency) 858-755-1522	firedepartmentgroup@delmar.ca.us
22 ND District Agricultural Association - Fairgrounds	Lewis Hughs, Facilities	858-792-4217 or (24/7 Security) 858-792-4285	LHughes@sdfair.com
County Office of Emergency Services	General	800-565-3490	oes@sdcounty.ca.gov
County of San Diego Department of Environmental Health and Quality Agency	Heather Buonomo, Director of Environmental Health	619-379-0773	Heather.Buonomo@sdcounty.ca.gov
County of San Diego Department of Public Health Emergency Preparedness and Response (PHPR)	Rob Sills, Director of PHPR	619-285-6434	Robert.Sills@sdcounty.ca.gov
State Water Resources Control Board District Engineer	Sean Sterchi, District Engineer	619-525-4159	Sean.Sterchi@waterboards.ca.gov
Critical Water User: County of San Diego Library at Del Mar	Polly Cipparrone Branch Manager, Del Mar	(858) 755-1666	Polly.Cipparone@sdcounty.ca.gov
Critical Water User: Winston School	Kim Kanetis, Director of Business & Operations	(858) 259-8155	Kim.Kanetis@thewinstonschool.org

Support Services Contacts: The following is a listing of support services that may be appropriate for a water shortage emergency.

Organization or Department	Company & Name	Phone	Email
Water Hauler	Palomar Mountain Premium Spring Water	760-743-0140	

Appendix A: San Diego County Water Authority Communications Plan

Section 9

Communication Plan

9.1 Introduction

The Water Authority and its 24 member agencies conduct communications and outreach about water supplies and water-use efficiency as an ongoing activity during normal supply conditions. However, clear and effective communications between water agencies, the public, public officials and other key stakeholders becomes even more important if supply conditions become abnormal and the Water Authority needs to activate its WSCP. Experience from previous droughts or other demand management periods, along with data from regional public opinion polls, indicate that when there is a need for urgent water conservation, people basically want to know the following:

1. What they need to do – specifically – to save water
2. How much water they need to save and for how long
3. Why they need to save water
4. What water agencies are doing to correct the supply problem or address the situation

While communicating these points may seem simple and straightforward on the surface, in practice the process can be challenging and complex for the Water Authority. The very diverse needs and characteristics of the Water Authority’s member agencies alone puts limits on the scope of messages and tactics that can be applied to the entire region. To further complicate matters, state-imposed regulations on local water districts during droughts or supply shortages have the potential to dictate a wide range of water-saving targets – and thus a variety of needed behaviors – across the region. Experience also has shown it is possible for the state to mandate emergency water savings targets or measures when there is no actual shortage emergency in the region. Finally, if residents and businesses are asked to save water for an extended period of time, their resolve to comply and help water agencies achieve their respective water-use targets can be eroded by a number of factors ranging from impacts to water rates, negative effects to their lifestyle, equity issues or simple “drought fatigue.”

These possibilities make it even more difficult for the Water Authority and its member agencies to communicate effectively, avoid confusion and maintain credibility. However, in previous droughts the Water Authority and its member agencies have been able to work together to overcome these obstacles and conduct effective, award-winning outreach campaigns. This section of the WSCP describes the basic communications plan needed to help the Water Authority successfully convey crucial information during all stages of the WSCP.

9.2 Coordination

For the reasons described in Section 9.1, it is vital for the Water Authority’s communications

to be closely coordinated with its member agencies. The Water Authority regularly interacts with its member agencies at several levels to ensure regional messaging and outreach efforts remain appropriate, effective and responsive to member agency needs. These levels include the Joint Public Information Council/Conservation Coordinators (staff level), the Member Agency Managers group (management level) and the Water Authority Board’s Legislation and Public Outreach Committee (Board level). During droughts or other times of limited supply that activate the WSCP, the Water Authority will establish more frequent schedules of updates, reports or discussions at all levels to ensure Water Authority outreach messages and tactics stay in sync with the changing needs of member agencies and their customers. The schedule and timing of these updates may adjust periodically to reflect evolving water shortage conditions or other factors.

During droughts or other situations that create supply shortages, it’s also common for entities outside the San Diego region, such as MWD, the Association of California Water Agencies and DWR, to engage in communication activities that extend into this area. Water Authority outreach staff will also engage in regular contact with these entities to help minimize the potential for their activities to cause local confusion, as well as seek opportunities to leverage these external resources to complement outreach already under way by the Water Authority and its member agencies.

To maximize internal coordination, the Water Authority will convene a “cabinet” of senior management and department executives from across the organization to discuss supply planning, operational, financial and communication issues related to the WSCP as needed.

9.3 Flexibility and Adaptability

The Water Authority’s WSCP includes six distinct levels of potential shortage, along with “normal” conditions when no out-of-the-ordinary water-saving actions are called for. It also includes a “catastrophic” condition when extreme events prompt emergency-oriented water-saving measures to preserve supplies for health and safety. It’s possible for the desired scope of water-saving actions or outcomes to vary widely at each level of the plan. For example, at Level 2 the communication messages, tactics and resources needed to reach a target of 12% would likely be very different than those needed to hit a target of 20%.

In addition, there are many potential communication strategies and tactics that can be deployed to help the Water Authority successfully implement each level of the WSCP. The precise mix of appropriate strategies and tactics is best determined based on a number of factors, including what WSCP level is activated, the specific supply or regulatory circumstances driving that activation, budget availability, seasonal conditions, and other factors.

Because of these potential variations, this communication plan doesn’t dictate every strategy and tactic or the scale of resources that needs to be applied regionally at each level of the WSCP. Rather, this plan includes recommended strategies and tactics that generally match the needs associated with the escalating levels. This is intended to give the Water Authority’s Board and management the flexibility to apply tailored communications approaches that best

fit the specific goals of the Water Authority and its member agencies at any given point, and the agility to react quickly to any changes in conditions. An outline summarizing recommended actions at each level is at the end of this section of the communication plan in Table 9-1. Specific, customized campaign plans with budgets and timelines will be crafted by the Public Affairs Department when needed to reflect the unique circumstances of any demand management or water shortage situation.

9.4 Key Audiences

The Water Authority needs to communicate with many different stakeholders as part of the WSCP. The intensity of outreach will likely vary with the WSCP level that is active at any given time, but the key audiences for the communication plan are fairly consistent. In general, they include:

- Member agencies
- General public (water consumers)
- Public officials
- Homeowners
- Multi-family property owners/managers
- Commercial-industrial property managers
- Landscape contractors/suppliers
- Business/civic leaders
- High-visibility or high-water-use industries (restaurants, hotels, construction, etc.)
- Land-use agencies
- Environmental groups
- Community-based service organizations
- Non-English-speaking populations
- Temporary residents (tourists, college students, etc.)

While it's important to communicate with all of these groups, at times some of these audiences may require higher priority or specialized outreach. Public Affairs staff will coordinate closely with member agencies and solicit feedback from stakeholders as needed to ensure outreach efforts are reaching key audiences.

9.5 Communication Objectives

In general, the communication objectives during the various levels of the WSCP include the following:

- Motivate water users to increase conservation immediately in ways that are consistent with any voluntary or mandatory actions called for at the current level of the WSCP.
- Raise awareness and understanding of the drought, regulatory or other conditions affecting water supplies and the need for increased conservation.

- Minimize confusion and maintain credibility of water agencies and conservation messages with an appropriate tone that avoids “cry wolf” perception and non-compliance backlash.
- Make water users feel appreciated for existing accomplishments in improving their water-use efficiency, and for supporting regional and local investments in water supply reliability.
- Educate regional civic and business leaders, elected officials and the public that the region’s water agencies have greatly improved the region’s water supply reliability by promoting water-use efficiency programs, diversifying water supply sources and investing more than \$3.5 billion in alternative supplies and major water infrastructure.
- Prepare the region for escalation (or de-escalation) of the WSCP based on trending supply conditions.
- Ensure all stakeholders believe they are being treated fairly in relationship to other stakeholders.
- Maintain communication effectiveness by soliciting or monitoring feedback from member agencies, key stakeholders and the general public to update or adapt messages or tactics.
- Exit WSCP implementation having demonstrated the effectiveness and value of conservation actions and water supply reliability investments in minimizing impacts to the region’s economy and quality of life.

9.6 Standard Communications

During normal water supply conditions, the Water Authority will engage in standard communications and outreach activities. That means the Water Authority will promote water-use efficiency as a way of life in the San Diego region as part of its regular messaging delivered through the following channels:

- Media relations (pitches, interviews and news releases)
- Social media (Twitter, Facebook, YouTube, etc.)
- Websites (sdcwa.org and WaterSmartSD.org)
- E-newsletters
- Speaker’s Bureau presentations
- Community events
- Citizens Water Academy
- Water News Network

During normal conditions, water efficiency will be promoted by sharing water-saving tips that are consistent with any permanent water-use restrictions in effect throughout the San Diego region (by statewide mandate or consensus of all member agencies). It will also be promoted by ongoing marketing of the Water Authority’s array of regional water-use efficiency programs that are designed to help the member agencies achieve their long-term water management targets or goals, as well as promotion of other available water-savings tools and resources (for example, any available MWD-administered programs or SDG&E-funded

programs).

9.7 Level 1 Strategies and Tactics

This section lists a number of strategies the Water Authority has used to guide successful drought response campaigns in the past and should be considered during Level 1 of the WSCP (up to 10% voluntary conservation).

Recommended Strategies

- Engage member agencies in the development of a regional campaign theme that fits the call for increased conservation and can adapt to changing levels of the WSCP as necessary.
- Send clear, consistent and understandable messages encouraging increased voluntary conservation.
- Develop and maintain a steady stream of media relations activities and social media communications that explain the need to conserve and how to conserve, promote water-use efficiency programs and incentives, and/or give general support for water conservation. Schedule these efforts to provide timely support for water-use efficiency events, strategies and other programs.
- Enhance the level of conservation-oriented community outreach through greater frequency of outreach at community events and speaker’s bureau presentations.
- Develop specific outreach efforts that target key industries or groups (hospitality, HOAs, building managers, etc.) to raise awareness of, and participation in, drought response actions and water-use efficiency programs.
- Recruit community and media partners who can expand the reach of drought response communications.
- Establish an online hub for:
 - Information on current status of regional WSCP and recommended water conservation practices
 - Link to www.WaterSmartSD.org, sdcwa.org or other appropriate website for more water conservation tips, rebates, tools and other resources
 - Updated information on statewide weather, water supply and/or regulatory conditions
 - Information on how the Water Authority and its 24 member agencies are successfully enhancing the region’s water supply reliability through investments in water supply diversification and major infrastructure
 - Links to member agency websites for retail level information
- Regularly communicate with local, state and other elected officials in the region about the importance of achieving voluntary water conservation and encourage them to publicly promote such efforts to their constituents.

Recommended Tactics

- Member agency communications
 - Involve member agencies in development and implementation of communication plan through more frequent JPIC meetings and supplemental communications.
 - Provide regular campaign updates to member agency general managers and their designated staff, and Board members.
 - Provide campaign outreach materials (newsletter articles, graphics, bill stuffers, etc.) to member agencies for reproduction and distribution.
 - Encourage member agencies to promote consistent regional messaging and conservation programs to their customers and the public in their service areas.
- News conference or other event to announce/explain change in WSCP level
- Water Authority communications (ongoing)
 - Media relations
 - News releases, advisories, op-eds, etc.
 - Media opportunities (pitches, events, in-studio appearances, etc.)
 - Partnerships
 - Website messaging (sdcwa.org and/or WaterSmartSD.org)
 - Provide links to local agency webpages containing water-use restrictions or other drought instructions/resources for customers
 - Provide searchable directory of conservation rebates or programs by postal code or street address
 - Provide lists of easy, understandable water-saving tips
 - Provide links to water-savings programs
 - E-newsletters
 - Social media (Twitter, Facebook, YouTube, etc.)
- Community relations
 - Events (water-efficient plant fairs, classes, fairs, garden tours, etc.)
 - Speakers Bureau presentations
 - Community partnerships
 - Restaurants
 - Hotels/motels
 - Local breweries
 - San Diego Gas & Electric
 - Large employers (public and private)
 - Public agencies (Caltrans, San Diego County, etc.)
 - Shopping malls (Westfield, Simon Property Group)
 - High-traffic destinations (airport, theme parks, San Diego County Fair, etc.)
 - Regional gardens (Water Conservation Garden, San Diego Botanic Garden)
 - Ethnic outreach (presentations, community events, partnerships)

- Industry relations
 - Targeted outreach to high-water-use industries
- School education
 - Modify school assembly program content to include messages about need for increased voluntary conservation.
 - Provide other regional water and environmental education programs with key messages about need for increased conservation.
- Government relations outreach
 - Encourage elected officials to post links to regional campaign on their websites and promote water conservation tips and program availability at www.WaterSmartSD.org to constituents through newsletters and social media.
 - Provide conservation information and other support as necessary to government officials for their own media events, hearings, community meetings, etc.
- Advertising
 - Execute targeted advertising plans to enhance awareness of need for increased voluntary conservation or spur participation in specific programs or behaviors.
 - Coordinate campaign timing/placement with those of other water agencies to leverage available resources (City of San Diego, MWD, Department of Water Resources/Association of California Water Agencies).
 - Coordinate message tone and content to maximize consistency and minimize confusion; ensure external campaign messages are appropriate for San Diego region.
 - Complement ads with public service announcements on local government access channels
- Educational/promotional items that encourage conservation (dye tablets, self-closing hose nozzles, etc.)
- Testing and evaluation
 - Use public opinion polls and other opportunities to test messages and tactics and revise as needed to increase effectiveness.

9.8 Level 2 Strategies and Tactics

In the event of a more severe supply shortage or demand management period that requires entering Level 2 of the WSCP (up to 20% mandatory conservation), the Water Authority will continue to deploy or enhance Level 1 strategies and tactics as needed, and will consider supplemental strategies and tactics listed below.

Recommended Strategies

- Engage member agencies in the development of a more serious campaign message that reflects the need for compliance with mandatory water-use restrictions. Provide visuals and other supporting materials for the campaign to member agencies.
- Send clear, consistent and understandable messages regarding mandatory water-use restrictions in effect.
- Enhance media relations activities and social media communications related to water-use restrictions, conservation programs and drought conditions. Schedule these efforts to provide timely support for new campaign initiatives, conservation events and other programs.
- Leverage stakeholder groups’ communication channels to help distribute updated information about restrictions and conservation as soon as possible; groups to include business organizations, civic organizations, service clubs, religious leaders, elected officials, along with key associations governing HOAs, building managers, landscape companies, etc.
- Expand efforts to recruit community and media partners who can expand the reach of drought response communications.
- Enhance the campaign’s current level of grass-roots community outreach with strategies and tactics that encourage more community members to publicly show their support for the campaign (i.e., turn more homeowners, property managers, students, etc. into individual “community partners” promoting increased conservation in neighborhoods around the county)
- Expand drought outreach advertising; continue to coordinate communications and advertising messages and plans with the region’s 24 member agencies, MWD, the state Department of Water Resources, and other agencies.
- Consider adjustments to water conservation resources and programs in ways that make finding and participating in key programs easier, or to facilitate short-term water savings. Support these efforts with events to provide information and resources to consumers or other stakeholders.

Recommended Tactics

- Member agency communications
 - Involve member agencies in planning and implementing more serious or urgent campaign messaging and activities.
 - Supplement regular JPIC meetings with more frequent communications (email updates, etc.) as needed.
- News conference or other event to announce/explain any change in WSCP level
 - Consider joint announcement with business/civic partners to enhance communitywide buy-in for water-savings actions.
- Water Authority communications (ongoing)
 - Websites
 - Add “pop-ups” with outreach campaign messages to sdewa.org and WaterSmartSD.org.
 - E-newsletter

- Ensure drought updates or conservation information are distributed at least twice monthly through WaterSource e-newsletter.
- Social media
 - Expand community engagement on drought campaign through more involved social media activity (consider neighborhood-based outreach via Nextdoor or other means).
- Regional water-waste reporting app
 - Enhance efforts to encourage customers to download and use it to report incidents of water waste directly to member agencies.
- Stakeholder outreach
 - Provide updated campaign messaging to business groups, service clubs, religious leaders, elected officials to distribute to their own audiences (via newsletter, email, etc.).
 - Accelerate outreach efforts to key associations governing HOAs, building managers, landscape companies, etc. to immediately raise awareness of and compliance with mandatory water use restrictions, as well as to update information on available conservation resources.
- Community Partnerships
 - Consider adding budget resources to attract more high-value community partnerships
- Government Relations
 - Supplement existing activities with in-person briefings to state and local officials on state of water supplies and water conservation campaign.
- Advertising
 - Execute mass-market regional advertising with involving radio, TV to enhance awareness of needed mandatory water-saving actions.
 - Continue to coordinate campaign timing/placement with those of other water agencies to leverage available resources (City of San Diego, MWD, Department of Water Resources/Association of California Water Agencies).
- Testing and evaluation
 - Use public opinion polls or other opportunities to test messages and tactics and revise them as needed to increase effectiveness.

9.9 Level 3-4 Strategies and Tactics

In the event of a more severe supply shortage or demand management period that requires entering Level 3 or 4 of the WSCP (up to 30% or 40% mandatory conservation, respectively), the Water Authority will continue to deploy or enhance Level 2 strategies and tactics as needed, and will consider supplemental strategies and tactics listed below.

Recommended Strategies

- Engage member agencies in the development of a more serious campaign message that reflects the need for higher level of extraordinary conservation. Provide visuals and other supporting materials for the campaign to member agencies.
- Send clear, consistent and understandable messages regarding mandatory water use restrictions in effect and escalating challenges affecting water supplies.
- Conduct specialized outreach to landscape industry and water users with large ornamental landscapes to achieve significant reductions in discretionary outdoor water use while minimizing long-term property damage.
- Initiate targeted outreach to major CII water users to help them identify, prepare for and, as much as possible, avoid negative impacts from extreme water conservation requirements.
- Evaluate the appropriateness of continuing to promote long-term water-use efficiency programs and tools amid worsening supply conditions/increasing restrictions.

Recommended Tactics

- Member agency communications
 - Involve member agencies in the planning and implementation of updated messages and campaign activities to raise awareness for more extreme water-saving actions and behaviors; provide updated communications materials to member agencies.
- News conference or other event to announce/explain any change in WSCP level
 - Invite local elected officials to participate to convey need for savings across the region.
- Water Authority communications (ongoing)
 - Promote compliance with specific, regionally applicable water-use restrictions.
 - Encourage users to check with local water agencies for additional rules or restrictions in effect for their area.
 - Provide instructions for triaging landscape resources during extreme shortage conditions (saving trees, etc.).
- Stakeholder outreach
 - Reinforce business groups, service clubs, religious leaders, elected officials to spread awareness of need for significant, collective water-saving actions to preserve our economy and quality of life.
 - Provide specialized technical assistance sessions or resources to help homeowners achieve immediate reductions in water use while minimizing landscape damage.
 - Consider providing specialized technical assistance to large landscape customers (HOAs, cities, schools, etc.) to help achieve large-scale reductions in discretionary outdoor water use.
 - Conduct specialized outreach to industries (hospitality, car washes, restaurants, etc.) or other large-scale water users (schools, park and rec

- districts) that will likely experience impacts from emergency conservation to determine solutions for minimizing economic or quality of life impacts.
- Add water conservation information/assistance resources to 211 emergency services directory.
- Advertising
 - Supplement mass-media campaign to enhance awareness of extreme water-saving actions as needed.
- Testing and evaluation
 - Use public opinion polls or other opportunities to test messages and tactics, and revise as needed to increase effectiveness.

9.10 Level 5-6 Strategies and Tactics

In the event of a situation that requires entering Level 5 or 6 of the WSCP (up to or greater than 50% mandatory conservation, respectively), the Water Authority will continue to deploy or enhance Level 3-4 strategies and tactics as needed, and will consider supplemental strategies and tactics listed below to reflect increased shortage conditions.

Recommended Strategies

- Engage member agencies in the development of campaign messages and tactics that raise awareness of the extreme shortage conditions facing the region and the likely need to focus water use on essential public health and safety needs.
- Send clear, consistent and understandable messages regarding what uses of water or levels of water use remain acceptable for residential, commercial and public water users.
- Emphasize the need for all residents and businesses to work together to help the region successfully weather the situation.
- Raise awareness of any urgent actions being taken by water agencies to improve water supply conditions; provide regular updates on those efforts.
- Suspend promotion of ongoing water-use efficiency programs to focus resources on promoting extreme/emergency conservation measures.
- Coordinate with regional emergency response agencies/services on messaging/additional outreach tactics if needed.

Recommended Tactics

- Member agency communications
 - Involve member agencies in the planning and implementation of updated messages and campaign activities to raise awareness for water-saving actions and behaviors; provide updated communications materials to member agencies.
- News conference or other event to announce/explain any change in WSCP level; consider joint event with emergency response/public health authorities

- Water Authority communications
 - Encourage users to check with local water agencies for additional rules or restrictions in effect for their area.
 - Promote all available resources to aid vulnerable populations.
 - Provide updates to media and other stakeholders on water supply conditions as often as possible (daily or as needed).
 - Evaluate need for “phone bank” or additional staff resources to handle public inquiries.
- Stakeholder outreach
 - Provide updated communications materials to business groups, service clubs, religious leaders, elected officials to raise immediate awareness for increased water-savings actions and available assistance resources.

9.11 Catastrophic Shortage Communications

In the event of a natural disaster, infrastructure failure or other situation that requires regional water use to be quickly prioritized for or limited to essential public health and safety needs, the Water Authority will immediately deploy or enhance appropriate communication strategies and tactics from WSCP Levels 1-6 as needed, and will consider strategies and tactics listed below to reflect the need for urgent, emergency-driven water conservation.

Recommended Strategies

- Engage member agencies in the development of campaign messages and tactics that raise awareness of the emergency conditions facing the region and the need to focus water use on essential public health and safety needs.
- Send clear, consistent and understandable messages regarding what uses of water or levels of water use remain acceptable for residential, commercial and public water users, and the expected duration of this restricted level of water use
- Emphasize the need for all residents and businesses to work together to help the region successfully weather the situation.
- Raise awareness of any urgent actions being taken by water agencies to improve water supply conditions; provide regular updates on those efforts.
- Suspend promotion of ongoing, long-term water-use efficiency programs and tools to focus resources on communicating need for immediate water conservation actions.
- Coordinate with local emergency response agencies/services on messaging and outreach tactics where possible.

Recommended Tactics

- Member agency communications
 - Involve member agencies in the planning and implementation of updated messages and campaign activities to raise awareness for emergency-level

water-saving actions and behaviors; provide updated communications materials to member agencies.

- News conference or other event to announce/explain change in WSCP level
 - Consider joint announcement with emergency response or public health agencies to reflect need for emergency-level water conservation.
- Water Authority communications
 - Provide specific instructions for acceptable water use during emergency conditions and how long conditions will likely be in effect.
 - Encourage users to check with local water agencies for additional rules or restrictions in effect for their area.
 - Promote all available resources to aid vulnerable populations.
 - Provide updates to media and other stakeholders on water supply conditions as often as possible (daily or as needed).
 - Consider deploying alternate home page on sdcwa.org to emphasize emergency-oriented water conservation actions.
- Stakeholder outreach
 - Provide updated communications materials to business groups, service clubs, religious leaders, elected officials to raise immediate awareness for emergency-level water-savings actions and available assistance resources.
 - Conduct specialized outreach to landscape and related industries with significant outdoor water use to urge immediate end to landscape water use (if required).
 - Coordinate dissemination of information regarding water-use restrictions to local law enforcement or other public agencies to help maximize widespread compliance with emergency mandates.

Table 9-1 General Communication Plan Outline				
Normal Conditions	Level 1 Up to 10% Voluntary Conservation	Level 2 Up to 20% Mandatory Conservation	Levels 3-4 Up to 30% or 40% Mandatory Conservation	Levels 5-6 Up to 50% or >50% Mandatory Conservation
Standard outreach efforts in effect (media relations, social media, websites, speakers' bureau, etc.)	Update message platform to reflect conditions, Water Authority response, and needed actions from public	Update campaign and messages to generate immediate actions/behaviors by public	Update campaign and messages to raise awareness for more severe water-saving actions/behaviors by public	Update campaign and messages to reflect extreme or emergency condition and likely need to focus water use on health/safety needs
Promote ongoing WUE programs/tools/ partnerships designed to achieve long-term water management goals (SB X7-7 or other)	Announce status change to key stakeholders, general public (News release, social media, etc.)	Announce status change to key stakeholders, general public (News release, social media, etc.)	Announce status change to key stakeholders, general public (News release, social media, etc.)	Announce status change to key stakeholders, general public (News release, social media, etc.)
Standard coordination with member agencies (JPIC meets 6x a year)	Include increased conservation messages on sdcwa.org and in standard outreach efforts; provide regular condition updates to stakeholders/media	Supplement Level 1 activities with additional tactics (mass media ads, partnerships, events, Nextdoor messages, etc.) as needed; provide regular condition updates to stakeholders/media	Supplement Level 2 outreach with additional tactics (supplemental ads, etc.) as needed; provide regular updates to stakeholders/media on conditions	Supplement Level 3-4 outreach with additional tactics (phone bank/hotline, etc.) as needed; provide regular condition updates to stakeholders/media on conditions
Quarterly Board reports on public communication and water-use efficiency outreach activities	Enhance promotion of ongoing WUE programs/tools; deploy targeted advertising	Conduct issue briefings with elected officials, other key civic and business leaders	Conduct specialized outreach to reduce discretionary outdoor use while minimizing landscape damage	Suspend promotion of long-term WUE programs/ tools to focus on imminent needs
	Increase coordination with member agencies (JPIC meets monthly)	Continue promotion of ongoing WUE programs/tools	Promote available water assistance resources for vulnerable populations; specialized outreach to impacted industries	Continue enhanced coordination with member agencies as needed (daily or weekly briefings or email updates, etc.)
	Initiate regular Board reports on campaign efforts	Enhance coordination with member agencies as needed (weekly email updates, etc.)	Continue enhanced coordination with member agencies as needed	Analyze water use and other data to determine any appropriate supplemental actions
	Analyze water use and other data to determine any appropriate supplemental actions	Analyze water use and other data to determine any appropriate supplemental actions	Analyze water use and other data to determine any appropriate supplemental actions	

Catastrophic Communications

- Implementation of any appropriate strategies and tactics from Levels 1-6
- Shift to messages that reflect emergency condition and need to focus water use on health/safety needs
- Potential joint news release/news event with public health officials or incident commanders to announce condition and explain needed actions
- Ensure ongoing coordination with emergency response services with daily advisories or alerts, etc. as needed; provide regular condition updates to stakeholders/media

Evaluate posting alternate, emergency-themed website home page

ORDINANCE NO. XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING DEL MAR MUNICIPAL CODE CHAPTER 21.70 TO REVISE EMERGENCY WATER MANAGEMENT WATER SHORTAGE STAGES

WHEREAS, water supply conditions have been challenged statewide in California for several years; and

WHEREAS, Chapter 21.70 of the Del Mar Municipal Code (DMMC) establishes an emergency water management program in order to conserve water supplies, minimize the effects of water supply shortages, and allow the City to respond to water emergency conditions; and

WHEREAS, Sections 21.70.110 through 21.70.140 of the DMMC establish emergency water conservation requirements for Drought Response Stage 1 – Drought Watch Condition; Stage 2 – Drought Alert Condition; Stage 3 – Drought Critical condition; and Stage 4 –Drought Emergency Condition; and

WHEREAS, on July 11, 2022, the City Council adopted Resolution No. 2022-51, reaffirming Drought Response Stage 1 (previously declared on July 5, 2016) and encouraging continued voluntary adherence with water demand reduction measures; and adopted Ordinance No. 991 to amend DMMC Sections 21.70.110 and 21.70.120 to revise Drought Watch and Alert Conditions; and

WHEREAS, on March 24, 2023, Governor Newsom issued Executive Order N-5-23 rolling back major elements of prior drought-related emergency orders in light of improved drought conditions throughout California; however, all 58 counties retain a state of emergency to allow for continued drought response and recovery efforts as long-term water supply continues to remain a concern for California; and

WHEREAS, historically, the City of Del Mar, as a small water supplier with approximately 1,860 service connections, was not required to prepare its own Water Shortage Contingency Plan (WSCP) and, instead, relied on the San Diego County Water Authority’s WSCP for guidance related to water conservation and demand reduction measures; and

WHEREAS, on September 23, 2021, Senate Bill (SB) 552 was passed to require small water suppliers serving 1,000 to 2,999 service connections to develop and maintain their own abridged WSCPs that would include specified water shortage planning elements by July 1, 2023; and

WHEREAS, pursuant to the requirements of SB 552, the City of Del Mar has prepared a WSCP, and the City Council has held a public hearing to receive public comments on the WSCP; and

WHEREAS, as a result of the City's WSCP adoption on June 5, 2023, DMMC Chapter 21.70 needs to be amended to align with State and County defined water shortage levels and with the City's WSCP.

NOW THEREFORE, the City Council of the City of Del Mar, California, hereby ordains as follows:

SECTION ONE:

That Chapter 21.70 of the Del Mar Municipal Code relating to Emergency Water Management of the City of Del Mar is amended to read as set forth in:

Exhibit A to this Ordinance.

SECTION TWO:

This Ordinance was introduced by the City Council on June 5, 2023.

SECTION THREE:

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 FOUR:

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 FIVE:

The Ordinance shall take effect and be in full force thirty (30) days after the date of adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, California at the Regular Meeting held this 19^h day of June, 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, NESTOR MACHADO, Acting City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. XXX 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 June, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Nestor Machado, Acting City Clerk
City of Del Mar

Chapter 21.70 EMERGENCY WATER MANAGEMENT

21.70.010 Purpose.

This Chapter establishes an emergency water management program in order to conserve water supplies, minimize the effects of water supply shortages, and allow the City to respond to water emergency conditions. (Cal. Const. Art. X, §§ 2 and 7; and Water Code § 375.)

(Ord. No. 603; Ord. No. 816; Ord. No. 828; Ord. No. 903)

21.70.020 Scope of Chapter.

The provisions of this Chapter shall apply to all persons using water delivered by the City.

21.70.030 Water Conservation Policy.

- A. It is the policy of the City that all public and private users of water delivered by the City shall use such water for reasonable purposes and in a reasonable manner in a conscientious effort to conserve water.
- B. When the emergency water use regulations in this Chapter are not declared to be in effect, those regulations may still be considered as recommended methods for voluntarily conserving water.
- C. The City may initiate and maintain education programs to encourage the conservation of water.

Cross reference(s)—Water conservation program, Ch. 21.60.

21.70.040 Water Management Regulations.

- A. *Levels.* During water shortages, the City shall impose water use regulations in levels. Sections 21.70.100 et seq. of this Chapter contain a sequential, regulatory program of increasingly more stringent prohibitions on the use of water delivered within the City. When the City declares that a particular water shortage level is in effect, the regulations contained in a declared level shall be complied with by all persons using water delivered by the City.
- B. *Declaration of Level.*
 1. The City shall monitor the projected supply of water and the demand for water by persons within its jurisdiction and, in consultation with those agencies providing water to City, determine when water management regulations are required in order for the City to deal with water shortages.
 2. When it is determined that a particular level of water management regulation is required, either the City Council or the City Manager may issue a declaration which will announce the level of regulatory management that is to be imposed. Moving to Level 6 requires a properly noticed public hearing.

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3. The declaration shall be made by public announcement posted at City Hall. Also, the City Manager may publish a notice of the determination in a newspaper of general circulation and on the City website.
 4. If the declaration is made by the City Manager, the matter shall be placed on the agenda of the City Council at its next meeting. The City Council shall thereupon ratify the City Manager's declaration, rescind the declaration, or issue its own declaration.
 5. The regulatory level announced in the declaration shall become effective seven days following the date of posting; except, when a water emergency is declared, the regulatory level shall become effective immediately upon posting.

21.70.050 Modification of Regulation as Applied In Special Circumstance.

- A. *Appeals Board.* An Appeals Board for this Chapter shall consist of the City Council.
- B. *Appeal.*
 1. Any person subject to the regulations and decisions imposed in accordance with the provisions of this Chapter may submit an appeal, in writing, to the City Clerk.
 2. The City Manager may render a decision or set the matter to be heard by the Appeals Board which will render a written decision within 30 calendar days of the receipt of the appeal.
 3. If the appellant is dissatisfied with the City Manager's determination, the appellant may seek a review by the Appeals Board.
- C. *Modification Authorized.* In accordance with the procedures provided above, the City Manager and the Appeals Board are authorized to make minor and limited modifications to any regulation in this Chapter when it has been demonstrated that due to special circumstances as applied to a particular case, the application of the unmodified regulation constitutes a threat to health, safety or welfare or will result in an undue, unreasonable hardship. Provided, however, that such modification shall not cause water to be wasted or used in an unreasonable manner and the purposes of this Chapter can be accomplished.

21.70.060 Prohibition.

- A. It is unlawful for any person to knowingly use water or permit the use of water supplied by the City in a manner contrary to any provision of this Chapter declared to be in effect. (Misdemeanor in accordance with Water Code § 377.)
- B. The use of reclaimed or "grey" water in accordance with the regulations of the Department of Health Services and in accordance with any other applicable regulations, is not subject to the regulations of this Chapter.
- C. It is a misdemeanor for anyone to tamper with or otherwise interfere with the operation of a water meter without the express authority, in writing, of the City.
- D. It is unlawful for any person to knowingly present false information to the City when information is requested by the City in accordance with the provisions of this Chapter.
- E. Compliance with this Section is a condition imposed upon the continued uninterrupted delivery of water.

21.70.090 Enforcement—Restricting or Discontinuing Water Service.

- A. A continued, willful failure to comply with the conditions imposed upon the continued, uninterrupted delivery of water may result in a Notice of Violation being mailed to the metered customer, accompanied by a copy of relevant portions of these regulations.
- B. Failure to correct the violation by bringing water use into compliance with the conditions imposed upon the continued, uninterrupted delivery of water will result in a Notice of Hearing Re: Violation being mailed to the metered customer.
- C. The City Manager shall conduct the hearing. The noticed person shall have the opportunity to present information and arguments in response to the notice.
- D. Following the hearing, if an uncured violation is found to exist, the City Manager may order either:
 - 1. The installation of a flow restrictor in the meter for a minimum of 72 hours; or
 - 2. Discontinuance of water service for a specified period of time.
- E. When it is necessary to install a flow restrictor or to discontinue service, a metered customer shall pay a fee of \$250.00 to the City. When it is necessary to remove a flow restrictor or to re-establish water service, a metered customer shall pay a fee of \$250.00 to the City. The fees referenced in this subparagraph are payable by the metered customer when the service is rendered. Further, payment in full of all outstanding fees is a condition to the restoration of full service.

21.70.110 Water Shortage Level 1—Watch Condition.

- A. A Water Shortage Level 1 condition is also referred to as a "Water Storage Watch" condition. Level 1 shall be declared to encourage voluntary water conservation with an aim towards reducing water demand by up to 10%. This Level 1 condition applies when the Water Authority notifies its member agencies to activate the appropriate voluntary provisions of the water shortage contingency plan.
- B. When Level 1 is declared and in effect, all persons shall comply with the voluntary water usage reductions and other mandatory conditions as may be identified by the Governor, State of California, or San Diego County Water Authority.
- C. Irrigating "Non-Functional Turf" at commercial, industrial, and institutional sites is prohibited. "Non-Functional Turf," as defined in section 996 of title 23 of the California Code of Regulations, as may be amended from time to time, is defined as any turf (grass) that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. "Non-Functional Turf" does not include sports fields and turf that is regularly used for human recreational purposes or for civic or community events.
 - a. Notwithstanding subsection (C)(1), the use of water is not prohibited by this section to the extent necessary to ensure the health of trees and other perennial non-turf plantings or to the extent necessary to address an immediate health and safety need.
 - b. Notwithstanding subsection (C)(1), the City may approve a request for continued irrigation of non-functional turf where the user certifies that the turf is a low water use plant with a plant factor of 0.3 or less, and demonstrates the actual use is less than 40% of reference evapotranspiration.

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- D. Wasteful and Unreasonable Water Uses are prohibited as listed in section 995 of title 23 of the California Code of Regulations to prevent unreasonable use of water and to promote water conservation. The following water usage activities are prohibited:
1. Washing down paved surfaces, including but not limited to sidewalks, driveways, parking lots, tennis courts, or patios, except when it is necessary to alleviate safety or sanitation hazards.
 2. Water waste resulting from inefficient landscape irrigation, such as runoff, low head drainage, or overspray, etc. Similarly, irrigation causing water flows onto non-targeted areas, such as adjacent property, non-irrigated areas, hardscapes, roadways, or structures are prohibited.
 3. Irrigation is prohibited during and within 48 hours after measurable rainfall of at least one-fourth of one inch of rain.
 4. Use of a handheld hose equipment without a positive shut-off nozzle to wash vehicles, except where the hose is fitted with a shut-off nozzle. It is encouraged to use a bucket to wash vehicles or at a commercial site with recirculated water.
 5. Use of potable water to operate ornamental fountains with exceptions for those fountains that use pumps to recirculate water and only require refilling to replace evaporative losses.
 6. Use of potable water for street cleaning or construction purposes, unless non-potable water is unavailable or as-needed to protect the health and safety of the public.
- E. In addition to the water usage reductions and other conditions referenced in subsections B, C, and D above, when Level 1 is declared and in effect all persons are requested to comply with the following water demand reduction measures;
1. Irrigate residential and commercial landscape before 10:00 a.m. or after 6:00 p.m.; limited to three applications per week.
 2. Serve and re-fill water in restaurants, bars, and other food service establishments only upon request.
 3. Offer guests in hotels, motels, and other commercial lodging establishments the option of not laundering towels and linens daily.
 4. Repair all water leaks within 72 hours of notification by the City.

Additional Conditions on Uninterrupted Delivery: None.

(Ord. No. 816; Ord. No. 828; Ord. No 948 , § 2, Exh. B, 6-3-2019; Ord. No. 984 , § 1, 12-13-2021; Ord. No. 991 , § 1, 7-11-2022)

21.70.120 Water Shortage Level 2—Warning Condition.

- A. Water Shortage Level 2 condition is also referred to as a " Water Shortage Warning" condition. Level 2 shall be declared when the City determines that water usage should be reduced up to 20 percent from the ordinary demand requirement, as determined by the City.
- B. When Level 2 is declared and in effect, metered customers of the City shall receive uninterrupted water delivery subject to the modified surcharge rate structure set as follows:

Meter Size	Bimonthly Fixed Surcharge During Water Shortage Level 2:					
	7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
5/8"	\$2.98	\$3.14	\$3.26	\$3.40	\$3.64	\$3.84
3/4"	4.48	4.70	4.90	5.10	5.46	5.76
1"	7.46	7.84	8.16	8.50	9.10	9.58
1 1/2"	14.90	15.68	16.30	17.00	18.20	19.14
2"	23.84	25.08	26.08	27.20	29.10	30.64
3"	47.68	50.14	52.16	54.40	58.20	61.26
4"	74.48	78.32	81.48	84.98	90.94	95.70
22nd DAA*	953.24	1,002.48	1,042.94	1,087.64	1,163.98	1,224.84
One 8" meter and two 10" meters						

Volumetric Surcharge applied to all units of usage by all customer classes.

Volumetric Surcharge During Water Shortage Level 2:					
7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
\$0.23	\$0.25	\$0.26	\$0.27	\$0.29	\$0.30

- C. When Level 2 is declared and in effect, the demand reduction measures listed in Level 1 shall become mandatory. Additional measures may be implemented based on City Council direction or Emergency Orders.

(Ord. No. 816; Ord. No. 828; Ord. No. 903; Ord. No 948 , § 2, Exh. B, 6-3-2019; Ord. No. 991 , § 1, 7-11-2022)

21.70.130 Water Shortage Level 3— Acute Condition.

- A. A Water Shortage Level 3 condition is also referred to as an "Acute Water Shortage" condition. Level 3 shall be declared when the City determines that water usage should be reduced up to 30 percent from the ordinary demand requirement, as determined by the City.
- B. When a Level 3 is declared and in effect, metered customers of the City shall receive uninterrupted water delivery subject to the modified surcharge rate structure set as follows:

Meter Size	Bimonthly Fixed Surcharge During Water Shortage Level 3:					
	7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
5/8"	\$4.84	\$5.04	\$5.26	\$5.44	\$5.86	\$6.20
3/4"	7.24	7.56	7.88	8.22	8.78	9.30
1"	12.08	12.60	13.12	13.70	14.62	15.48
1 1/2"	24.14	25.18	26.24	27.38	29.24	30.94
2"	38.62	40.28	41.98	43.82	46.80	49.52
3"	77.22	80.54	83.94	87.62	93.58	99.02
4"	120.64	125.84	131.16	136.90	146.20	154.70
22nd DAA*	1,544.08	1,610.52	1,678.80	1,752.30	1,871.32	1,980.06
*One 8" meter and two 10" meters						

Volumetric Surcharge applied to all units of usage by all customer classes.

Volumetric Surcharge During Water Shortage Level 3:					
7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
\$0.42	\$0.44	\$0.46	\$0.48	\$0.52	\$0.55

C. In addition to the water usage reductions and other conditions referenced in Level 1 and Level 2, when Level 3 is declared and in effect all persons are requested to comply with the following water demand reduction measures:

1. Irrigate residential and commercial landscape before 10:00 a.m. or after 6:00 p.m.; limited to two applications per week. Irrigation is prohibited during and within 48 hours after measurable rainfall of at least one-fourth of one inch of rain.
2. Repair all water leaks within 48 hours of notification by the City.
3. Only wash vehicles or at a commercial site with recirculated water.

(Ord. No. 816; Ord. No. 828; Ord. No. 903; Ord. No 948 , § 2, Exh. B, 6-3-2019)

21.70.140 Water Shortage Level 4—Critical Condition.

A. A Water Shortage Level 4 condition is also referred to as a " Critical Water Shortage " condition. Level 4 shall be declared when the City requires a demand reduction of 40 percent in order for the City of Del Mar to have maximum supplies available to meet anticipated demands from the ordinary demand requirement, as determined by the City.

B. When Level 4 is declared and in effect, metered customers of the City shall receive uninterrupted water delivery subject to the modified surcharge rate structure set as follows:

Meter Size	Bimonthly Fixed Surcharge During Water Shortage Level 4:					
	7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
5/8"	\$6.64	\$6.94	\$7.24	\$7.56	\$8.06	\$8.56
3/4"	9.96	10.40	10.86	11.34	12.10	12.84
1"	16.60	17.34	18.10	18.90	20.16	21.38
1 1/2"	33.20	34.68	36.18	37.78	40.30	42.74
2"	53.12	55.48	57.88	60.44	64.48	68.40
3"	106.22	110.94	115.74	120.86	128.94	136.78
4"	165.96	173.34	180.84	188.84	201.46	213.70
22nd DAA*	2,124.18	2,218.54	2,314.68	2,416.94	2,578.68	2,735.28
*One 8" meter and two 10" meters						

Volumetric Surcharge applied to all units of usage by all customer classes.

Volumetric Surcharge During Water Shortage Level 4:					
7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24

\$0.66	\$0.69	\$0.72	\$0.76	\$0.81	\$0.86
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C. The water usage reductions and other conditions established in Level 1, Level 2, and Level 3 will remain in place. Additional demand reduction measures will be established by the City Council and implemented.

(Ord. No. 816; Ord. No. 828; Ord. No. 903; Ord. No 948 , § 2, Exh. B, 6-3-2019)

21.70.150 Water Shortage Level 5—Emergency Condition.

- A. A Water Shortage Level 5 condition is also referred to as a "Water Shortage Emergency" condition. A Level 5 shall be declared when the City requires a demand reduction of 50 percent in order for the City of Del Mar to have maximum supplies available to meet anticipated demands from the ordinary demand requirement, as determined by the City.
- B. The water usage reductions and other conditions established in Level 1, Level 2, Level 3, and Level 4 will remain in place. Additional demand reduction measures will be established by the City Council and implemented.

21.70.160 Water Shortage Level 6—Catastrophic Condition.

- A. A Water Shortage Response Level 6 condition is also referred to as a "Catastrophic Water Shortage" condition. Level 6 shall be declared when the City declares a water shortage emergency pursuant to California Water Code Section 350 which requires a demand reduction of greater than 50 percent in order for the City of Del Mar to have maximum supplies available to meet anticipated demands from the ordinary demand requirement, as determined by the City.
- B. The water usage reductions and other conditions established in Level 1, Level 2, Level 3, Level 4 and Level 5 will remain in place. Additional demand reduction measures will be established by the City Council and implemented.

21.70.170 Wastewater Utility Rates During Water Shortage Conditions.

- A. Wastewater customers are billed for sewer service based on their water usage. During water shortage periods, water usage will decline and threaten the fiscal stability of the wastewater utility. Therefore, during water shortage periods, wastewater charges will be calculated based on the assumption that sewer usage is the same as the commensurate month from the last non-drought fiscal year. Drought sewer charges will be lifted after one full year of non-drought consumption records can be established.
 1. *Residential.* Sewer discharges will be estimated based on the assumed sewage usage during the last non-drought year.
 2. *Commercial.* Sewer discharges will be estimated based on 90 percent of the water usage during the last non-drought year. A user may petition to have their sewer discharge (water usage) assumption lowered if their annual water demand drops below their non-drought

water demands by a level below the drought reduction levels plus an additional 20 percent. As a user can meet the previously defined criteria, their sewage discharge assumptions will be lowered to the current water demands, adding back any water savings required under the drought requirements. As an example, if the drought reductions are 20 percent, and the user drops their water consumption by 45 percent, then the resulting sewer will be calculated based on 120 percent of the current water consumption.

3. *Fairgrounds*. Sewer commodity charges during drought conditions will be calculated based on the greater of (1) the rolling average of the past same bimonthly period during the last three fiscal years or (2) the actual metered sewage.

(Ord. No 948 , § 2, Exh. B, 6-3-2019)

21.70.180 Additional Conditions on Uninterrupted Delivery.

In accordance with California Government Code § 53756, the rates posted above will be adjusted accordingly to account for any increases in the purchase cost of wholesale water, or increases in inflationary measure.

Chapter 21.70 EMERGENCY WATER MANAGEMENT

21.70.010 Purpose.

This Chapter establishes an emergency water management program in order to conserve water supplies, minimize the effects of water supply shortages, and allow the City to respond to water emergency conditions. (Cal. Const. Art. X, §§ 2 and 7; and Water Code § 375.)

(Ord. No. 603; Ord. No. 816; Ord. No. 828; Ord. No. 903)

21.70.020 Scope of Chapter.

The provisions of this Chapter shall apply to all persons using water delivered by the City.

21.70.030 Water Conservation Policy.

- A. It is the policy of the City that all public and private users of water delivered by the City shall use such water for reasonable purposes and in a reasonable manner in a conscientious effort to conserve water.
- B. When the emergency water use regulations in this Chapter are not declared to be in effect, those regulations may still be considered as recommended methods for voluntarily conserving water.
- C. The City may initiate and maintain education programs to encourage the conservation of water.

Cross reference(s)—Water conservation program, Ch. 21.60.

21.70.040 Water Management Regulations.

- A. ~~Stages~~Levels. During water shortages, the City shall impose water use regulations in ~~levels~~stages. Sections 21.70.100 et seq. of this Chapter contain a sequential, regulatory program of increasingly more stringent prohibitions on the use of water delivered within the City. When the City declares that a particular water ~~management-shortage level~~stage is in effect, the regulations contained in a declared ~~level~~stage shall be complied with by all persons using water delivered by the City.
- B. *Declaration of ~~Level~~Stage*.
 1. The City shall monitor the projected supply of water and the demand for water by persons within its jurisdiction and, in consultation with those agencies providing water to City, determine when water management regulations are required in order for the City to deal with water shortages.
 2. When it is determined that a particular ~~level~~stage of water management regulation is required, either the City Council or the City Manager may issue a declaration which will announce the ~~level~~stage of regulatory management that is to be imposed. Moving to Level 6 requires a properly noticed public hearing.

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3. The declaration shall be made by public announcement posted at City Hall. Also, the City Manager may publish a notice of the determination ~~notice shall be published a minimum of three consecutive times~~ in a newspaper of general circulation and on the City website.
 4. If the declaration is made by the City Manager, the matter shall be placed on the agenda of the City Council at its next meeting. The City Council shall thereupon ratify the City Manager's declaration, rescind the declaration, or issue its own declaration.
 5. The regulatory levelstage announced in the declaration shall become effective seven days following the date of posting; except, when a water emergency is declared, the regulatory levelStage shall become effective immediately upon posting.

21.70.050 Modification of Regulation as Applied In Special Circumstance.

- A. *Appeals Board.* An Appeals Board for this Chapter shall consist of the City Council.
- B. *Appeal.*
 1. Any person subject to the regulations and decisions imposed in accordance with the provisions of this Chapter may submit an appeal, in writing, to the City Clerk.
 2. The City Manager may render a decision or set the matter to be heard by the Appeals Board which will render a written decision within 30 calendar days of the receipt of the appeal.
 3. If the appellant is dissatisfied with the City Manager's determination, the appellant may seek a review by the Appeals Board.
- C. *Modification Authorized.* In accordance with the procedures provided above, the City Manager and the Appeals Board are authorized to make minor and limited modifications to any regulation in this Chapter when it has been demonstrated that due to special circumstances as applied to a particular case, the application of the unmodified regulation constitutes a threat to health, safety or welfare or will result in an undue, unreasonable hardship. Provided, however, that such modification shall not cause water to be wasted or used in an unreasonable manner and the purposes of this Chapter can be accomplished.

21.70.060 Prohibition.

- A. It is unlawful for any person to knowingly use water or permit the use of water supplied by the City in a manner contrary to any provision of this Chapter declared to be in effect. (Misdemeanor in accordance with Water Code § 377.)
- B. The use of reclaimed or "grey" water in accordance with the regulations of the Department of Health Services and in accordance with any other applicable regulations, is not subject to the regulations of this Chapter.
- C. It is a misdemeanor for anyone to tamper with or otherwise interfere with the operation of a water meter without the express authority, in writing, of the City.
- D. It is unlawful for any person to knowingly present false information to the City when information is requested by the City in accordance with the provisions of this Chapter.

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- E. Compliance with this Section is a condition imposed upon the continued uninterrupted delivery of water.

21.70.090 Enforcement—Restricting or Discontinuing Water Service.

- A. A continued, willful failure to comply with the conditions imposed upon the continued, uninterrupted delivery of water may result in a Notice of Violation being mailed to the metered customer, accompanied by a copy of relevant portions of these regulations.
- B. Failure to correct the violation by bringing water use into compliance with the conditions imposed upon the continued, uninterrupted delivery of water will result in a Notice of Hearing Re: Violation being mailed to the metered customer.
- C. The City Manager shall conduct the hearing. The noticed person shall have the opportunity to present information and arguments in response to the notice.
- D. Following the hearing, if an uncured violation is found to exist, the City Manager may order either:
 - 1. The installation of a flow restrictor in the meter for a minimum of 72 hours; or
 - 2. Discontinuance of water service for a specified period of time.
- E. When it is necessary to install a flow restrictor or to discontinue service, a metered customer shall pay a fee of \$250.00 to the City. When it is necessary to remove a flow restrictor or to re-establish water service, a metered customer shall pay a fee of \$250.00 to the City. The fees referenced in this subparagraph are payable by the metered customer when the service is rendered. Further, payment in full of all outstanding fees is a condition to the restoration of full service.

21.70.110 ~~Water Shortage Demand Management/Drought Response Stage-Level 1—Drought Watch~~ Condition.

- A. A ~~Water Shortage Demand Management/Drought Response Stage-Level 1~~ condition is also referred to as a "~~Drought Water Storage Watch~~" condition. ~~A Stage-Level 1~~ shall be declared to encourage voluntary water conservation with an aim towards reducing water demand by up to 10%. This ~~Stage-Level 1~~ condition applies when the Water Authority notifies its member agencies to activate the appropriate voluntary provisions of the water shortage contingency plan.
- B. When ~~Stage-Level 1~~ is declared and in effect, all persons shall ~~be urged to comply, on a voluntary basis,~~ with the voluntary water usage reductions and other mandatory conditions as may be identified by the Governor, State of California, or San Diego County Water Authority.
- C. Irrigating "Non-Functional Turf" at commercial, industrial, and institutional sites is prohibited. "Non-Functional Turf," as defined in section 996 of title 23 of the California Code of Regulations, as may be amended from time to time, is defined as any turf (grass) that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. "Non-Functional Turf" does not include sports fields and turf that is regularly used for human recreational purposes of for civic or community events.
 - a. Notwithstanding subsection (C)(1), the use of water is not prohibited by this section to the extent necessary to ensure the health of trees and other perennial non-turf plantings or to the extent necessary to address an immediate health and safety need.

b. Notwithstanding subsection (C)(1), the City may approve a request for continued irrigation of non-functional turf where the user certifies that the turf is a low water use plant with a plant factor of 0.3 or less, and demonstrates the actual use is less than 40% of reference evapotranspiration.

D. Wasteful and Unreasonable Water Uses are prohibited as listed in section 995 of title 23 of the California Code of Regulations to prevent unreasonable use of water and to promote water conservation. The following water usage activities are prohibited:

1. Washing down paved surfaces, including but not limited to sidewalks, driveways, parking lots, tennis courts, or patios, except when it is necessary to alleviate safety or sanitation hazards.
2. Water waste resulting from inefficient landscape irrigation, such as runoff, low head drainage, or overspray, etc. Similarly, irrigation causing water flows onto non-targeted areas, such as adjacent property, non-irrigated areas, hardscapes, roadways, or structures are prohibited.
3. Irrigation is prohibited during and within 48 hours after measurable rainfall of at least one-fourth of one inch of rain.
4. Use of a handheld hose equipment without a positive shut-off nozzle to wash vehicles, except where the hose is fitted with a shut-off nozzle. It is encouraged to use a bucket to wash vehicles or at a commercial site with recirculated water.
5. Use of potable water to operate ornamental fountains with exceptions for those fountains that use pumps to recirculate water and only require refilling to replace evaporative losses.
6. Use of non-potable water for street cleaning or construction purposes, unless non-potable water is ~~when unavailable~~ or as-needed to protect the health and safety of the public.

E. In addition to the water usage reductions and other conditions referenced in subsections ~~B, C, and D~~ above, when ~~Stage-Level 1~~ is declared and in effect all persons are requested to comply with the following water demand reduction measures;

- ~~1. Irrigating "Non-Functional Turf" at commercial, industrial, and institutional sites is prohibited. "Non-Functional Turf," as defined in section 996 of title 23 of the California Code of Regulations, as may be amended from time to time, is defined as any turf (grass) that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. "Non-Functional Turf" does not include sports fields and turf that is regularly used for human recreational purposes or for civic or community events.~~
 - ~~a. Notwithstanding subsection (C)(1), the use of water is not prohibited by this section to the extent necessary to ensure the health of trees and other perennial non turf plantings or to the extent necessary to address an immediate health and safety need.~~
 - ~~b. Notwithstanding subsection (C)(1), the City may approve a request for continued irrigation of non-functional turf where the user certifies that the turf is a low water use plant with a plant factor of 0.3 or less, and demonstrates the actual use is less than 40% of reference evapotranspiration.~~
- ~~2. Stop washing down paved surfaces, including but not limited to sidewalks, driveways, parking lots, tennis courts, or patios, except when it is necessary to alleviate safety or sanitation hazards.~~

- ~~3. Stop water waste resulting from inefficient landscape irrigation, such as runoff, low head drainage, or overspray, etc. Similarly, stop water flows onto non-targeted areas, such as adjacent property, non-irrigated areas, hardscapes, roadways, or structures.~~
- ~~43. Irrigate residential and commercial landscape before 10:00 a.m. or after 6:00 p.m.; limited to three applications per week. Irrigation is prohibited during and within 48 hours after measurable rainfall of at least one-fourth of one inch of rain.~~
- ~~54. Use a handheld hose equipment with positive shut-off nozzle and bucket to wash vehicles or at a commercial site with recirculated water.~~
- 62. Serve and re-fill water in restaurants, bars, and other food service establishments only upon request.
- 73. Offer guests in hotels, motels, and other commercial lodging establishments the option of not laundering towels and linens daily.
- 84. Repair all water leaks within 72 hours of notification by the City.
- ~~9. Use re-circulated water to operate ornamental fountains.~~
- ~~10. Use non-potable water for construction purposes when available.~~

Additional Conditions on Uninterrupted Delivery: None.

(Ord. No. 816; Ord. No. 828; Ord. No 948 , § 2, Exh. B, 6-3-2019; Ord. No. 984 , § 1, 12-13-2021; Ord. No. 991 , § 1, 7-11-2022)

21.70.120 Demand Management/Drought Water Shortage Response Stage Level 2—Drought Alert Warning Condition.

- A. Demand Management/Drought Response Water Shortage Stage Level 2 condition is also referred to as a "Drought Water Shortage Alert Warning" condition. A Stage Level 2 shall be declared when the City determines that water usage should be reduced up to 20 percent from the ordinary demand requirement, as determined by the City.
- B. When Level Stage 2 is declared and in effect, metered customers of the City shall receive uninterrupted water delivery subject to the modified surcharge rate structure set as follows:

Meter Size	Bimonthly Fixed Surcharge During Demand Management/Drought Water Shortage Level 2:					
	7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
3/8"	\$2.98	\$3.14	\$3.26	\$3.40	\$3.64	\$3.84
1/2"	4.48	4.70	4.90	5.10	5.46	5.76
1"	7.46	7.84	8.16	8.50	9.10	9.58
1 1/2"	14.90	15.68	16.30	17.00	18.20	19.14
2"	23.84	25.08	26.08	27.20	29.10	30.64
3"	47.68	50.14	52.16	54.40	58.20	61.26
4"	74.48	78.32	81.48	84.98	90.94	95.70
22nd DAA*	953.24	1,002.48	1,042.94	1,087.64	1,163.98	1,224.84
One 8" meter and two 10" meters						

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Volumetric Surcharge applied to all units of usage by all customer classes.

Volumetric Surcharge During Demand-Management/Drought-Periods Water Shortage Level 2:					
7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
\$0.23	\$0.25	\$0.26	\$0.27	\$0.29	\$0.30

- C. When Stage-Level 2 is declared and in effect, the demand reduction measures listed in Stage-Level 1 shall become mandatory. Additional measures may be implemented based on City Council direction or Emergency Orders.

(Ord. No. 816; Ord. No. 828; Ord. No. 903; Ord. No 948 , § 2, Exh. B, 6-3-2019; Ord. No. 991 , § 1, 7-11-2022)

21.70.130 ~~Demand-Management/Drought~~Water Shortage Response Stage-Level 3— Acute Drought Critical Condition.

- A. A Demand-Management/Drought Water Shortage Response Stage-Level 3 condition is also referred to as an "Acute Water ShortageDrought Critical" condition. Stage-Level 3 shall be declared when the City determines that water usage should be reduced up to 40-30 percent from the ordinary demand requirement, as determined by the City.
- B. When a Level-Stage 3 is declared and in effect, metered customers of the City shall receive uninterrupted water delivery subject to the modified surcharge rate structure set as follows:

Meter Size	Bimonthly Fixed Surcharge During Demand-Management/Drought Water Shortage Level 3:					
	7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
5/8"	\$4.84	\$5.04	\$5.26	\$5.44	\$5.86	\$6.20
3/4"	7.24	7.56	7.88	8.22	8.78	9.30
1"	12.08	12.60	13.12	13.70	14.62	15.48
1 1/2"	24.14	25.18	26.24	27.38	29.24	30.94
2"	38.62	40.28	41.98	43.82	46.80	49.52
3"	77.22	80.54	83.94	87.62	93.58	99.02
4"	120.64	125.84	131.16	136.90	146.20	154.70
22nd DAA*	1,544.08	1,610.52	1,678.80	1,752.30	1,871.32 1,980.06	
*One 8" meter and two 10" meters						

Volumetric Surcharge applied to all units of usage by all customer classes.

Volumetric Surcharge During Demand-Management/Drought-Periods Water Shortage Level 3:					
7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
\$0.42	\$0.44	\$0.46	\$0.48	\$0.52	\$0.55

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C. In addition to the water usage reductions and other conditions referenced in Level 1 and Level 2, when Level 3 is declared and in effect all persons are requested to comply with the following water demand reduction measures:

1. Irrigate residential and commercial landscape before 10:00 a.m. or after 6:00 p.m.; limited to two applications per week. Irrigation is prohibited during and within 48 hours after measurable rainfall of at least one-fourth of one inch of rain.
2. Repair all water leaks within 48 hours of notification by the City.
3. Only wash vehicles or at a commercial site with recirculated water.

(Ord. No. 816; Ord. No. 828; Ord. No. 903; Ord. No 948 , § 2, Exh. B, 6-3-2019)

21.70.140 ~~Demand Management/Drought Response~~ Water Shortage Stage Level 4—Water Shortage Critical Drought Emergency Condition.

- A. A Demand Management/Drought Response Water Shortage Stage Level 4 condition is also referred to as a "Critical Drought Water Shortage -Emergency" condition. A Stage Level 4 shall be declared when the City declares a water shortage emergency pursuant to California Water Code Section 350 which requires a demand reduction of more than 40 percent in order for the City of Del Mar to have maximum supplies available to meet anticipated demands from the ordinary demand requirement, as determined by the City.
- B. When a Stage Level 4 is declared and in effect, metered customers of the City shall receive uninterrupted water delivery subject to the modified surcharge rate structure set as follows:

Meter Size	Bimonthly Fixed Surcharge During <u>Demand Management/Drought Water Shortage Level 4:</u>					
	7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
5/8"	\$6.64	\$6.94	\$7.24	\$7.56	\$8.06	\$8.56
3/4"	9.96	10.40	10.86	11.34	12.10	12.84
1"	16.60	17.34	18.10	18.90	20.16	21.38
1 1/2"	33.20	34.68	36.18	37.78	40.30	42.74
2"	53.12	55.48	57.88	60.44	64.48	68.40
3"	106.22	110.94	115.74	120.86	128.94	136.78
4"	165.96	173.34	180.84	188.84	201.46	213.70
22nd DAA*	2,124.18	2,218.54	2,314.68	2,416.94	2,578.68	2,735.28
*One 8" meter and two 10" meters						

Volumetric Surcharge applied to all units of usage by all customer classes.

Volumetric Surcharge During <u>Demand Management/Drought Periods Water Shortage Level 4:</u>					
7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
\$0.66	\$0.69	\$0.72	\$0.76	\$0.81	\$0.86

C. The water usage reductions and other conditions established in Level 1, Level 2, and Level 3 will remain in place. Additional demand reduction measures will be established by the City Council and implemented.

(Ord. No. 816; Ord. No. 828; Ord. No. 903; Ord. No 948 , § 2, Exh. B, 6-3-2019)

21.70.150 Water Shortage Level 5—Emergency Condition.

- A. A Water Shortage Level 5 condition is also referred to as a "Water Shortage Emergency" condition. A Level 5 shall be declared when the City requires a demand reduction of 50 percent in order for the City of Del Mar to have maximum supplies available to meet anticipated demands from the ordinary demand requirement, as determined by the City.
- B. The water usage reductions and other conditions established in Level 1, Level 2, Level 3, and Level 4 will remain in place. Additional demand reduction measures will be established by the City Council and implemented.

21.70.160 Water Shortage Level 6—Catastrophic Condition.

- A. A Water Shortage Response Level 6 condition is also referred to as a "Catastrophic Water Shortage" condition. Level 6 shall be declared when the City declares a water shortage emergency pursuant to California Water Code Section 350 which requires a demand reduction of greater than 50 percent in order for the City of Del Mar to have maximum supplies available to meet anticipated demands from the ordinary demand requirement, as determined by the City.
- B. The water usage reductions and other conditions established in Level 1, Level 2, Level 3, Level 4 and Level 5 will remain in place. Additional demand reduction measures will be established by the City Council and implemented.

21.70.170 Wastewater Utility Rates During ~~Demand Management/Drought~~ Water Shortage Conditions.

- A. Wastewater customers are billed for sewer service based on their water usage. During ~~demand management/drought water shortage~~ periods, water usage will decline and threaten the fiscal stability of the wastewater utility. Therefore, during ~~demand management/drought water shortage~~ periods, wastewater charges will be calculated based on the assumption that sewer usage is the same as the commensurate month from the last non-drought fiscal year. Drought sewer charges will be lifted after one full year of non-drought consumption records can be established.
1. *Residential.* Sewer discharges will be estimated based on the assumed sewage usage during the last non-drought year.
 2. *Commercial.* Sewer discharges will be estimated based on 90 percent of the water usage during the last non-drought year. A user may petition to have their sewer discharge (water

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(Supp. No. 7)

usage) assumption lowered if their annual water demand drops below their non-drought water demands by a level below the drought reduction levels plus an additional 20 percent. As a user can meet the previously defined criteria, their sewage discharge assumptions will be lowered to the current water demands, adding back any water savings required under the drought requirements. As an example, if the drought reductions are 20 percent, and the user drops their water consumption by 45 percent, then the resulting sewer will be calculated based on 120 percent of the current water consumption.

3. *Fairgrounds*. Sewer commodity charges during drought conditions will be calculated based on the greater of (1) the rolling average of the past same bimonthly period during the last three fiscal years or (2) the actual metered sewage.

(Ord. No 948 , § 2, Exh. B, 6-3-2019)

21.70.160180 Additional Conditions on Uninterrupted Delivery.

In accordance with California Government Code § 53756, the rates posted above will be adjusted accordingly to account for any increases in the purchase cost of wholesale water, or increases in inflationary measure.



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Amanda Lee, Principal Planner
Jennifer Gavin, Associate Planner
Karen Brindley, Planning and Community Development Director
Via Ashley Jones, City Manager

DATE: June 5, 2023

SUBJECT: Introduction of an Ordinance to Amend Prospective Ordinance No. 982 and Adoption of a Resolution to Amend the City's Local Coastal Program Land Use Plan Pursuant to California Coastal Commission Action on May 10, 2023, Approving a Conditional Certification Order with Required Modifications (All Relating to the Parking Amendments under DMMC Chapter 30.80 Adopted by the City Council in December 2021)

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council take the following actions to approve changes required by the California Coastal Commission (CCC) as a condition of final certification of the City's parking-related Local Coastal Program Amendment application (Zone Code Amendment ZA21-001/Local Coastal Program Amendment LCPA21-001) including:

- 1) Introduction of an Ordinance (Attachment A) to amend the previously adopted City Ordinance No. 982 (See Attachment D for Ordinance changes in strikeout-underline form); and
- 2) Adoption of a Resolution (Attachment B) to amend the Land Use Plan of the City's certified Local Coastal Program (LCP), consistent with the parking regulations under the Del Mar Municipal Code in accordance with the CCC conditional approval letter (Attachment C).

DISCUSSION/ANALYSIS:

These actions relate to a City Council special project identified in response to the COVID-19 pandemic that is intended to support a vibrant pedestrian oriented downtown and local business recovery. More specifically, the recommended actions accommodate changes to the City's parking regulations requested by local property owners and business owners (i.e., facilitate outdoor dining, facilitate occupancy of vacant commercial tenant spaces,

City Council Action:

and align local parking rates with industry standards and best practices) and implement community goals to activate street front spaces and reduce vehicle miles traveled (VMT).

On December 13, 2021, the City Council adopted Ordinance No. 982, to take effect upon CCC certification of the LCP amendment, which included a package of parking-related amendments to the City's Zoning Code and Local Coastal Program (Del Mar Municipal Code (DMMC) Chapter 30.80). Ordinance No. 982 addressed three main changes to DMMC Chapter 30.80 to support the downtown business community, as follows:

- 1) Provide an exemption for existing non-conforming commercial properties in the Central Commercial Zone to allow the change-out of existing tenant spaces with retail sales, restaurant, or personal service uses without providing additional parking;
- 2) Allow a restaurant to have an accessory food or beverage cart/stand (maximum of one per lot) without providing additional parking; and
- 3) Reduce the required parking for table service restaurants and facilitate outdoor dining as follows:
 - Provide a reduced rate of one parking space per 200 square feet (sf) (1:200 sf), which equates to a requirement for 5 spaces per 1,000 sf to replace the existing requirement of one parking space per 90 sf (1:90), which equates to 11.1 spaces per 1,000 sf;
 - Provide a new parking exemption for outdoor dining areas located on private property to exempt outdoor dining space up to a maximum size that is equivalent to the size of the restaurant's indoor area and require that any outdoor dining space above that threshold provide parking at a rate of 1:200 sf; and
 - Modify the parking rate for restaurants with a gross floor area greater than 5,000 sf in size to require parking at a rate of 1:90 for the portion of indoor restaurant that is in excess of 5,000 sf (to replace the existing requirement of 1:45 for restaurant space greater than 4,000 sf).

In accordance with State law, Ordinance No. 982 is subject to approval by the Coastal Commission before it goes into effect. On May 10, 2023, the CCC voted to conditionally certify the City's LCP amendment application and required the following modifications prior to final approval:

LCP Land Use Plan amendments for consistency with the parking code:

The LCP Land Use Plan (LUP), which identifies the City's LCP land use development, hazard control, coastal access, public scenic view, recreation, and sensitive land policies, is available at the following website link:

<https://www.delmar.ca.us/DocumentCenter/View/261/Land-Use-Plan-5919?bidId=>

The LCP Coastal Access policies in LUP Section IV relate specifically to parking. This includes the LUP goal statement IV-D to “Maximize the opportunity for access to beach areas by minimizing the competition for public on-street parking spaces”; and two policy statements including Policy IV-29 that requires an inventory of existing parking areas and a parking management plan and Policy IV-30 that specifies the parking requirements for each land use as specified in the City’s Zoning Code parking regulations. The CCC is requiring modifications as follows:

Policy IV-30 – Modifies the existing LCP policy by removing the list of specific parking space requirements for each land use (already stated in the code) and replacing it with a more general policy statement to require that new development provide off-street parking for residents, visitors, and employees in accordance with the certified LCP.

Policy IV-31 - Adds a new policy that parking be provided and managed to ensure that it is reasonably available without significantly impacting coastal resources or public access to coastal amenities and facilities.

Policy IV-32 - Adds a new policy for use of a flexible approach to parking that will consider use of shared parking, public transit, car sharing opportunities and ensure that public access to coastal resources will not be reduced.

Policy IV-33 – Adds a new policy to reduce the amount of land dedicated to parking through the use of parking structures, shared parking, and managed public parking.

Policy IV-34 – Adds a new policy requiring that where there is potential for significant transportation impacts (pursuant to CEQA), development should implement transportation demand strategies to reduce congestion, parking demand, and VMT, improve mobility, and reduce air pollution.

New Expiration Date to Monitor Implementation and Effect of Amendments:

The CCC approved the parking amendments on a temporary basis for an eight-year period to allow time for the City to monitor and evaluate whether to approve the amendments on a permanent basis or make additional adjustments. Prior to January 1, 2031, the City may process a LCP amendment to make the parking amendments permanent or adjust accordingly based on findings of a submitted parking management program report. Otherwise, if the code provisions are allowed to expire, any businesses that are granted approvals in reliance on the expired parking code provisions would become non-conforming for parking and allowed to maintain their nonconforming parking in accordance with the regulations in DMMC Chapter 30.76 (Nonconformities).

Requirement for Monitoring Reports and Parking Management Program:

Consistent with existing LUP Policy IV-29, CCC is requiring that a parking management program (PMP) be completed at least every 10 years with the deadline for the first PMP

to be completed by January 1, 2030. The intent is that the PMP be used to inform decisions about future parking amendments. The PMP must include documentation of the public parking inventory within one-quarter mile of the shoreline (including the San Dieguito River), and monitoring and data collection to be initiated by 2024 (to occur every 2-3 years and at least 3 times per PMP update cycle such as 2023-24, 2025-26, and 2028-29) to understand parking occupancy, parking demand, and inform future recommendations to address whether adjustments and/or new strategies should be implemented.

Exclusion of Beach Commercial Restaurants from New Parking Rates:

To ensure the LCP amendment will have no detrimental effect to the availability of public parking adjacent to the beach, the CCC incorporated language to exclude businesses in the Beach Commercial Zone (i.e., Jakes, Poseidon, and Brigantine restaurants) from utilizing the new reduced parking rates. Currently, these restaurants utilize valet parking programs. If these restaurants propose new development and/or any modifications to their existing parking operations, the request would be subject to approval of a Conditional Use Permit and Coastal Development Permit in accordance with the certified LCP.

Staff recommends the City Council proceed with the requested action to implement the changes required by CCC as a condition of final certification of the LCP amendment. Once the proposed resolution and ordinance are adopted, the package of parking regulations as a whole will become effective on the date the CCC takes action to concur the City has met the required conditions for approval, which is likely to occur in August 2023.

FISCAL IMPACT:

There is no fiscal impact or action to be taken by the City Council related to this agenda item.

HOUSING IMPACT:

The approval of the requested discretionary development applications would have no impact on the City of Del Mar's housing supply or housing affordability in that the requested amendments are not related to housing. However, the proposed additional LUP policies will make it easier to incorporate State housing requirements as they increasingly are requiring reduced or alternative modes of parking.

ENVIRONMENTAL IMPACT:

The proposed action is exempt from the preparation of an environmental document pursuant to the California Environmental Quality Act (CEQA) per CEQA Guidelines Article 18, Section 15265 (Adoption of Coastal Plans and Programs) and Article 19, Section 15301 (Existing Facilities).

ATTACHMENTS:

- Attachment A – Proposed Ordinance (Amending Ordinance No. 982)
- Attachment B – Proposed Resolution (Amending LCP Land Use Plan)
- Attachment C – CCC Conditional Approval Letter
- Attachment D – Strikeout-Underline (Amendments to Ordinance No. 982 and LCP LUP)

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING REGULATIONS GOVERNING REQUIRED OFF-STREET PARKING AS ADOPTED BY PROSPECTIVE ORDINANCE NO. 982 PURSUANT TO THE CONDITIONAL CERTIFICATION ACTION TAKEN BY THE CALIFORNIA COASTAL COMMISSION ON MAY 10, 2023 IN ORDER TO OBTAIN FINAL CERTIFICATION OF THE SUBMITTED LOCAL COASTAL PROGRAM AMENDMENT APPLICATION

WHEREAS, the Del Mar City Council adopted Ordinance No. 982 on December 13, 2021, to develop business support in the form of modifications to the City's off-street parking requirements; and

WHEREAS, on May 10, 2023, the California Coastal Commission (CCC) took action to conditionally certify the City's Local Coastal Program Amendment for Parking Ordinance No. 982, with amendments; and

WHEREAS, if the City Council adopts the Del Mar Municipal Code amendments included herein, which revise the proposed regulations included in prospective Ordinance No. 982 per the CCC's suggested modifications outlined in its conditional certification order, the City of Del Mar can resubmit the ordinance to the CCC to obtain final certification of the parking-related Local Coastal Program Amendment package.

NOW THEREFORE, the City Council of the City of Del Mar hereby ordains as follows:

SECTION ONE: That the City of Del Mar hereby acknowledges receipt of the California Coastal Commission's Resolution of Certification of City of Del Mar LCP Amendment No. LCP-6-DMR-21-0081-2 (Parking Adjustments), including any suggested modifications therein.

SECTION TWO: That DMMC Section 30.80.020 (General Parking Regulations) be modified to add the following, which amends the proposed regulations included in prospective Ordinance No. 982, as recommended by the California Coastal Commission:

No changes to sub-sections A-E

F. Notwithstanding Section 30.80.020(C), within the Central Commercial Zone, no additional parking spaces shall be required for a change in commercial use to a retail sales, restaurant, or personal services use, including associated tenant improvements within an existing commercial building with non-conforming parking where the change in use and tenant improvements are consistent with the following:

1. The commercial tenant space was existing as of January 1, 2020;

2. All existing parking spaces that are currently relied upon by the commercial building tenants shall be maintained, unless and until a "Release of Covenant" is approved by the City and recorded with the County Recorder or other City authorization is granted. This limitation shall apply to any existing off-street parking spaces located on-site and any off-site parking spaces that are relied upon by the existing commercial development through an approved in-lieu parking space agreement and/or a recorded parking agreement;
 3. The proposed change in use may involve the combination of existing tenant spaces, however, no tenant space on the lot shall exceed a maximum size of 5,000 square feet in gross floor area;
 4. If a tenant space is proposed to be expanded, additional parking spaces must be provided for the area of expansion (includes indoor and outdoor use areas) at the rate set forth in Section 30.80.030;
 5. No more than three restaurants shall be permitted per lot, including existing restaurant tenants; and
 6. All changes in use must comply with the horizontal zoning requirements of the Central Commercial zone in Section 30.22.030.
 7. The provisions of Section 30.80.020(F) shall remain in effect until January 1, 2031. This section may be amended prior to the expiration date based on the results and recommendations of the Parking Management Program described in Section 30.80.020(H). However, if not amended by January 1, 2031, then this section shall become inoperative on January 1, 2031. The January 1, 2031 deadline may be extended for good cause by the Executive Director of the California Coastal Commission.
- G. A restaurant establishment is permitted to have one accessory food/beverage stand or cart on-site that is not subject to required parking provided that all of the following provisions are met:
1. The stand/cart shall not exceed one hundred square feet in area;
 2. The stand/cart shall be open to the air on all sides to the extent possible except where it would preclude compliance with the San Diego County Health Department requirements applicable to food and beverage carts;
 3. The parking exemption shall apply to a maximum of one accessory food/beverage stand or cart per lot;

4. The location of the stand/cart shall not interfere with access to required off-street parking spaces; and
 5. A Design Review Permit is obtained in accordance with Section 23.08.030.
- H. In accordance with LUP Policy IV-29, an inventory of existing parking areas shall be used to develop and implement an overall Parking Management Program (PMP) that shall be revised periodically. The PMP shall be developed and implemented to strengthen and improve parking accessibility and availability in the City and to implement parking management and Transportation Demand Management (TDM) strategies to create a more balanced and efficient parking system that ensures access to the shoreline for a range of visitors and residents. The PMP shall include the following:
1. Existing Conditions & Parking Inventory documenting the characteristics of publicly available on- and off-street parking in the City of Del Mar, the inventory of publicly available on- and off-street parking within the City, and the City's existing parking code requirements and programs to manage parking.
 - a. Identification of sites where commercial tenants with non-conforming parking have modified the use and/or implemented tenant improvements within an existing commercial building per Section 30.80.020(F) and the number of off-street parking spaces provided for the property.
 - b. Identification of sites with new or expanded restaurants that have utilized the outdoor seating exemption per 30.80.030 (c) "Outdoor Dining on Private Property (Accessory to a Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage) outside of the Beach Commercial Zone" where the size of the outdoor seating area exceeds the size of the indoor seating area and the number of off-street parking spaces provided for the property.
 2. Parking Occupancy Analysis with a detailed description of occupancy (utilization) counts by both zone and type, parking rate in effect (if applicable), and by time of day and week, emphasizing summer months and including weekends. Data collection shall occur every 2-3 years at least 3 times per PMP update cycle, with the first collection taking place no later than 2024.
 3. Parking Demand Analysis of the parking space occupancy rates, existing City parking code requirements, peer city parking rates, and industry standard rates to determine the appropriateness of current minimum parking requirements.
 4. Recommendations that analyze the results of the inventory, occupancy, and demand analyses that draw from best practices by peer cities and industry-

wide standards as guidance, and have been tailored to address the unique features of Del Mar’s infrastructure, character, and geography.

5. Recommendations that address whether parking programs and services should be adjusted in order to maximize access to the shoreline taking into consideration such factors as future development, environmental justice, biological resources, and reducing vehicle miles traveled, as well as alternatives to private automobile use.

6. The PMP shall be completed no less often than every 10 years, with the next report to be completed no later than January 1, 2030. The January 1, 2030 deadline may be extended for good cause by the Executive Director of the Coastal Commission.

SECTION THREE: That DMMC Section 30.80.030 C.1. (Required Number of Off-Street Parking Spaces for Non-Residential Uses) be amended as follows:

No Changes to sections *Commercial Services*- Billiard Parlor through *Pet Services-Grooming*

<p>Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage outside of the Beach Commercial Zone</p>	<p>1 space per 200 sq. ft. of GFA up to 5,000 sq. ft. and 1 space for each 90 sq. ft. of GFA in excess of 5,000 sq. ft. (Note: a restaurant is permitted one on-site accessory food/beverage stand or cart that is not subject to required parking in accordance with Section 30.80.020(G).</p> <p>The restaurant parking rate provisions of Section 30.80.030(C) shall remain in effect until January 1, 2031. This section may be amended prior to the expiration date based on the results and recommendations of the Parking Management Program described in 30.80.020(H). However, if not amended by January 1, 2031, then the parking requirements shall be as shown for within the Beach Commercial Zone. The January 1, 2031 deadline may be extended for good cause by the Executive Director of the Coastal Commission.</p>
<p>Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site</p>	<p>1 space per 90 sq. ft. of GFA up to 4,000 sq. ft. and 1 space for each 45 sq. ft. of GFA in excess of 4,000</p>

<p>Consumption of Food and/or Beverage located in the Beach Commercial Zone</p>	<p>sq. ft. including all outdoor space, covered or uncovered, used for any restaurant purpose (Note: a restaurant is permitted one on-site accessory food/beverage stand or cart that is not subject to required parking in accordance with Section 30.80.020(G).</p>
<p>Outdoor Dining on Private Property (Accessory to a Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage) outside of the Beach Commercial Zone</p>	<p>No additional parking requirement if outdoor seating area is equal to or less than the indoor seating area.</p> <p>For any outdoor seating area that exceeds the indoor seating area, parking shall be provided at a rate of 1 space per 200 sq. ft., for the excess outdoor area.</p> <p>The outdoor dining parking provisions of Section 30.80.030(C) shall remain in effect until January 1, 2031. This section may be amended prior to the expiration date based on the results and recommendations of the Parking Management Program described in 30.80.020(H). However, if not amended by January 1, 2031, then the parking requirements shall be as shown for within the Beach Commercial Zone. The January 1, 2031 deadline may be extended for good cause by the Executive Director of the Coastal Commission.</p>

No changes to Sports & Recreation Club/Facility through Industrial/Manufacturing/Laboratory/Wholesale Printing.

SECTION FOUR: The City Council finds that approval of this Ordinance is exempt from the preparation of an environmental document pursuant to the California Environmental Quality Act (CEQA) per CEQA Guidelines Article 19, Section 15301 (Existing Facilities). The action would not expand any existing uses and would encourage less vehicles miles traveled and a reduction in greenhouse gas (GHG) emissions in that less dedicated parking spaces would be required to be provided for restaurant uses in the City's commercial zones. The City Council finds that none of the six exceptions to the use of a Categorical Exemption are applicable (Guidelines Section 15300.2). The City Council bases these findings upon the record prepared by the City and the City's analysis

demonstrating that no potential environmental effects would occur by adoption of this ordinance.

SECTION FIVE: This Ordinance was introduced by the City Council on June 5, 2023.

SECTION SIX: 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 SEVEN: 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.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the 19th day of June 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, NESTOR MACHADO, Acting City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No._____, 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 June, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Nestor Machado, Acting City Clerk
City of Del Mar

RESOLUTION NO. 2023 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, APPROVING THE AMENDMENTS TO THE EXISTING CERTIFIED DEL MAR LOCAL COASTAL PROGRAM (LCP) LAND USE PLAN (LCPA 21-001) AND DIRECTING STAFF TO SUBMIT THE LOCAL COASTAL PROGRAM AMENDMENT TO THE COASTAL COMMISSION FOR CERTIFICATION

WHEREAS, on June 21, 2021, the City Council approved a work program to develop business support in the form of modifications to the City's off-street parking requirements; and

WHEREAS, the City's parking requirements have been an ongoing, identified barrier to attracting businesses to the City of Del Mar; and

WHEREAS, the City Council approved LCPA21-001 on December 13, 2021, to incorporate modifications to the City's Parking Code in order to provide relief to Del Mar businesses; and

WHEREAS, the LCPA21-001 was submitted to the California Coastal Commission on December 20, 2021, for review and approval; and

WHEREAS, the Land Use Plan of the Local Coastal Program (LCP) identifies the City's LCP land use development, hazard control, coastal access, public scenic view, recreation, and sensitive land policies; and

WHEREAS, the Section IV Coastal Access policies in the LCP Land Use Plan relate specifically to parking; and

WHEREAS, the California Coastal Commission identified inconsistencies between the City's adopted Parking Ordinance No. 982 and the certified LCP Land Use Plan; and

WHEREAS, on May 10, 2023, the California Coastal Commission conditionally approved LCPA21-001 subject to City Council adoption of amendments to the LCP Land Use Plan and implementation program including modifications to Policy IV-30 relating to off-street parking requirements and the addition of new policies IV-31 through IV-34 relating to parking management and transportation demand strategies to reduce congestion, parking demand, and vehicles miles traveled (VMT), improve mobility, and reduce air pollution; and

WHEREAS, the Del Mar City Council considered these amendments at their June 5, 2023, hearing and supported staff's recommendation to include the LUP amendments to LCPA21-001.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Del Mar, that the proposed Amendment to the existing certified Local Coastal Program Land Use Plan (LCPA 21-001) is hereby adopted as shown in "Exhibit A" attached to this resolution.

BE IT FURTHER RESOLVED, that staff is hereby directed to submit the Local Coastal Program Amendment to the Coastal Commission for certification.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, State of California, at a Regular Meeting held on the 5th day of June 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, Nestor Machado, Acting City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Resolution No. 2023-XX, adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 5th day of June, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Nestor Machado, Acting City Clerk

Changes to the City's Land Use Policy:

~~IV-30 The City shall apply the following Off-Street Parking Regulations to assure that the parking needs generated by new development are provided on-site as indicated in the City's certified LCP Chapter 30.80.~~

REMOVE OFF-STREET PARKING REGULATIONS PAGES 80-84

REPLACE WITH:

IV-30 Provide parking for residents, visitors, and employees as part of new development in accordance with the City's certified Implementation Plan.

IV-31 Provide and manage parking so that it is reasonably available when and where it is needed, without significantly impacting coastal resources or public access to coastal amenities and facilities.

IV-32 To help reduce parking demand, consider flexibility in parking requirements such as shared parking opportunities, improved public transit services, reduced auto ownership, provision of car sharing opportunities, or other means, provided that public access is not reduced.

IV-33 Reduce the amount of land devoted to parking through measures such as parking structures, shared parking, and managed public parking while still providing appropriate levels of parking to maintain access to the shoreline.

IV-34 Where potential for significant transportation impacts is identified for proposed development, require implementation of transportation demand management (TDM) strategies as a mitigation tool to improve mobility, reduce congestion and parking demand, and reduce vehicle miles traveled (VMT), greenhouse gas emissions, and air pollution. The City shall actively encourage and, where appropriate to avoid impacts to public access and circulation, require development to implement incentives and programs to increase the use and availability of sustainable transportation (e.g., carpooling, bicycles, public transit, rail service, walking) such as the provision of employee transit passes or subsidies, ridesharing programs, bike racks, on-site showers and lockers, and similar measures.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



May 11, 2023

Ms. Amanda Lee
Principal Planner
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

Re: Certification of City of Del Mar LCP Amendment No. LCP-6-DMR-21-0081-2 (Parking Adjustments)

Dear Ms. Lee,

On May 10, 2023, the California Coastal Commission approved the above referenced amendment to the City of Del Mar Local Coastal Program (LCP). The amendment involves changes to the Implementation Plan (IP) to modify parking ratios for restaurants and several commercial uses in order to provide for increased flexibility for business owners and maintain a vibrant and pedestrian-friendly downtown area. More specifically, the changes to the IP included a reduction in parking ratios for restaurants, and a new exemption for outdoor dining space that is equal to or less than indoor dining space. Also included was a proposal for restaurants to have one accessory food or beverage cart per lot that cannot interfere with required off-street spaces. The proposed revisions to the IP also included an exemption for existing commercial properties in the Central Commercial (CC) Zone to change out their tenant spaces with retail sales, restaurant, or personal service uses while retaining their non-conforming parking. After the City's submittal of the IP amendment, Commission staff identified several inconsistencies between the City's request to revise parking standards in the IP and the existing parking standards in the certified LUP. Thus, City staff requested Commission staff incorporate several suggested modifications to the parking policies of the LUP in order to ensure consistency with the requested IP changes.

The Commission approved the LCP amendment with suggested modifications that address the protection of public access. The suggested modifications require the development of a new Parking Management Plan (PMP), which is to be completed no less than every 10 years, with the first deadline being January 1, 2030 (unless extended by the Executive Director). The changes to the parking standards proposed by the LCP are to remain in effect until the year 2031, unless amended to extend the changes based on the conclusions of the PMP. The exception is the Beach Commercial Zone, for which a suggested modification was made in order to retain the existing parking standards of the IP within that zone.

To correct the discrepancy between the parking standards of the IP and the LUP, several suggested modifications were made at the request of the City. This includes the removal of the specific parking standards contained in the LUP and the addition of several new parking and transportation-focused policies to protect public access and promote sustainable transportation. These include providing parking as appropriate for new development, managing parking without significantly impacting coastal resources or public access to the

coast, consideration of shared parking opportunities, and the inclusion of transportation demand management strategies to reduce congestion and parking demand and vehicle miles travelled.

Before the amendment request can become effectively certified, the Executive Director must determine that implementation of the approved amendment will be consistent with the Commission's certification order. This is necessary because the amendment was certified with suggested modifications.

In order for the Executive Director to make this determination, the local government must formally acknowledge receipt of the Commission's resolution of certification, including any terms or suggested modifications; and take any formal action which is required to satisfy them, such as revised plan policies, rezonings or other ordinance revisions. This certification must also include production of new LCP text demonstrating that the amendment, as approved by the Commission and accepted by the City, will be incorporated into the City's certified Local Coastal Program immediately upon concurrence by the Commission of the Executive Director's determination. The local government's action must be completely consistent with the Commission's certification order; if you are considering any change from what is presented in the attached suggested modification, you should contact this office immediately.

The Commission's certification order remains valid for six months from the date of its action; therefore, it is necessary for the City of Del Mar to take the necessary steps within six months. If you believe that the City of Del Mar will need additional time, you may request up to a one-year time extension but such an extension must be granted by the Coastal Commission at a subsequent hearing. As soon as the necessary documentation is received in this office and accepted, the Executive Director will report his/her determination to the Commission at its next regularly scheduled public hearing. If you have any questions about the Commission's action or this final certification procedure, please contact our office. Thank you and the other staff members who worked on this planning effort. We remain available to assist you and your staff in any way possible to continue the successful implementation of the local coastal program.

Sincerely,

Handwritten signature of Stephanie Leach in cursive script.

Stephanie Leach
Coastal Planner

A. Land Use Plan Modifications

Staff recommends the following suggested revisions to the proposed Land Use Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Delete the entirety of Policy IV-30, including the Off-Street Parking Regulations:

~~The City shall apply the following Off-Street Parking Regulations to new projects and redevelopment projects to assure that the parking needs generated by new development are provided on-site.~~

~~[...]~~

2. Add a new Policy IV-30 as follows:

Provide parking for residents, visitors, and employees as part of new development in accordance with the City's certified Implementation Plan.

3. Add a new Policy IV-31 as follows:

Provide and manage parking so that it is reasonably available when and where it is needed, without significantly impacting coastal resources or public access to coastal amenities and facilities.

4. Add a new Policy IV-32 as follows:

To help reduce parking demand, consider flexibility in parking requirements such as shared parking opportunities, improved public transit services, reduced auto ownership, provision of car sharing opportunities, or other means, provided that public access is not reduced.

5. Add a new Policy IV-33 as follows:

Reduce the amount of land devoted to parking through measures such as parking structures, shared parking, and managed public parking while still providing appropriate levels of parking to maintain access to the shoreline.

6. Add a new Policy IV-34 as follows:

Where potential for significant transportation impacts is identified for proposed development, require implementation of transportation demand management (TDM) strategies as a mitigation tool to improve mobility, reduce congestion and parking demand, and reduce vehicle miles traveled (VMT), greenhouse

gas emissions, and air pollution. The City shall actively encourage and, where appropriate to avoid impacts to public access and circulation, require development to implement incentives and programs to increase the use and availability of sustainable transportation (e.g., carpooling, bicycles, public transit, rail service, walking) such as the provision of employee transit passes or subsidies, ridesharing programs, bike racks, on-site showers and lockers, and similar measures.

B. Implementation Plan Modifications

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

7. Add a new subsection (7) to Section 30.80.020(F) as follows:

The provisions of Section 30.80.020(F) shall remain in effect until January 1, 2031. This section may be amended prior to the expiration date based on the results and recommendations of the Parking Management Program described in 30.80.020(H). However, if not amended by January 1, 2031, then this Section shall become inoperative on January 1, 2031. The January 1, 2031 deadline may be extended for good cause by the Executive Director of the Coastal Commission.

8. A new section (H) shall be added to Section 30.80.020 as follows:

In accordance with LUP Policy IV-29, an inventory of existing parking areas shall be used to develop and implement an overall Parking Management Program (PMP) that shall be revised periodically. The PMP shall be developed and implemented to strengthen and improve parking accessibility and availability in the City and to implement parking management and Transportation Demand Management (TDM) strategies to create a more balanced and efficient parking system that ensures access to the shoreline for a range of visitors and residents. The PMP shall include the following:

1. Existing Conditions & Parking Inventory that covers, at a minimum, areas of the City within one-quarter mile of the shoreline, including the San Dieguito Lagoon riverfront, documenting the characteristics of publicly available on- and off-street parking in the City of Del Mar, the inventory of publicly available on- and off-street parking within the City, and the City's existing parking code requirements and programs to manage parking.
 - a. Identification of sites where commercial tenants with non-conforming parking have modified the use or implemented tenant improvements within an existing commercial building per Section 30.80.020(F) and the number of off-street parking spaces provided for the property.

LCP-6-DMR-21-0081-2 (Parking Adjustments)
Suggested Modifications

- b. Identification of sites with new or expanded restaurants that have utilized the outdoor seating exemption per 30.80.030(c) "Outdoor Dining on Private Property (Accessory to a Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage) outside of the Beach Commercial Zone" where the size of the outdoor seating area exceeds the size of the indoor seating area and the number of off-street parking spaces provided for the restaurant.
 2. Parking Occupancy Analysis with a detailed description of occupancy (utilization) counts by both zone and type, parking rate in effect (if applicable), and by time of day and week, emphasizing summer months and including weekends. Data collection shall occur every 2-3 years at least 3 times per PMP update cycle, with the first collection taking place no later than 2024.
 3. Parking Demand Analysis of the parking space occupancy rates, existing City parking code requirements, peer city parking rates, and industry standard rates to determine the appropriateness of current minimum parking requirements for publicly available on- and off-street parking.
 4. Analysis of the results of the inventory and occupancy, including demand analyses that use best practices by peer cities and industry-wide standards as guidance. Recommendations shall be tailored to address the unique features of Del Mar's infrastructure, character, and geography.
 5. Recommendations that address whether parking programs and services should be adjusted in order to maximize access to the shoreline taking into consideration such factors as future development, environmental justice, biological resources, and reducing vehicle miles traveled, as well as alternatives to private automobile use.
 6. The PMP shall be completed no less often than every 10 years, with the next report to be completed no later than January 1, 2030. The January 1, 2030 deadline may be extended for good cause by the Executive Director of the Coastal Commission.
9. Parking requirements found in Section 30.80.030(C)(Non-Residential Use Parking Requirements) shall be modified as follows for the subject uses:

Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage outside of the Beach Commercial Zone

1 space per 200 sq. ft. of GFA up to 5,000 sq. ft. and 1 space for each 90 sq. ft. of GFA in excess of 5,000 sq. ft. (Note: a restaurant is permitted one on-site accessory food/beverage stand or cart that is not subject to required parking in accordance with Section 30.80.020(G)).

LCP-6-DMR-21-0081-2 (Parking Adjustments)
Suggested Modifications

The restaurant parking rate provisions of Section 30.80.030(C) shall remain in effect until January 1, 2031. This section may be amended prior to the expiration date based on the results and recommendations of the Parking Management Program described in 30.80.020(H). However, if not amended by January 1, 2031, then the parking requirements shall be as shown as those for the Beach Commercial Zone in Section 30.80.030(C) and any development that occurred under this section shall be considered legal non-conforming. The January 1, 2031 deadline may be extended for good cause by the Executive Director of the Coastal Commission.

10. Parking requirements for the Beach Commercial Zone shall be added to Section 30.80.030(C)(Non-Residential Use Parking Requirements) as follows:

Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage located in the Beach Commercial Zone

1 space per 90 sq. ft. of GFA up to 4,000 sq. ft. and 1 space for each 45 sq. ft. of GFA in excess of 4,000 sq. ft. including all outdoor space, covered or uncovered, used for any restaurant purpose (Note: a restaurant is permitted one on-site accessory food/beverage stand or cart that is not subject to required parking in accordance with Section 30.80.020(G)).

11. Parking requirements for outdoor dining proposed in Section 30.80.030(C)(Non-Residential Use Parking Requirements) shall be modified as follows:

Outdoor Dining on Private Property (Accessory to a Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage) outside of the Beach Commercial Zone

No additional parking requirement if outdoor seating area is equal to or less than the indoor seating area.

For any outdoor seating area that exceeds the indoor seating area, parking shall be provided at a rate of 1 space per 200 sq. ft., for the excess outdoor area.

The outdoor dining parking provisions of Section 30.80.030(C) shall remain in effect until January 1, 2031. This section may be amended prior to the expiration date based on the results and recommendations of the Parking Management Program described in 30.80.020(H). However, if not amended

LCP-6-DMR-21-0081-2 (Parking Adjustments)

Suggested Modifications

by January 1, 2031, then the parking requirements shall be as shown as those for the Beach Commercial Zone in Section 30.80.030(C) and any development that occurred under this section shall be considered legal non-conforming. The January 1, 2031 deadline may be extended for good cause by the Executive Director of the Coastal Commission.

Strikeout-Underline Identifying CCC Modifications

Following identifies prospective DMMC Section 30.80.020 with the CCC modifications shown in strikeout-underline:

DMMC Section 30.80.020 (General Parking Regulations) would be amended as follows:

No changes to sub-sections A-E

F. Notwithstanding Section 30.80.020(C), within the Central Commercial Zone, no additional parking spaces shall be required for a change in commercial use to a retail sales, restaurant, or personal services use, including associated tenant improvements within an existing commercial building with non-conforming parking where the change in use and tenant improvements are consistent with the following:

1. The commercial tenant space was existing as of January 1, 2020;
2. All existing parking spaces that are currently relied upon by the commercial building tenants shall be maintained, unless and until a “Release of Covenant” is approved by the City and recorded with the County Recorder or other City authorization is granted. This limitation shall apply to any existing off-street parking spaces located on-site and any off-site parking spaces that are relied upon by the existing commercial development through an approved in-lieu parking space agreement and/or a recorded parking agreement;
3. The proposed change in use may involve the combination of existing tenant spaces, however, no tenant space on the lot shall exceed a maximum size of 5,000 square feet in gross floor area;
4. If a tenant space is proposed to be expanded, additional parking spaces must be provided for the area of expansion (includes indoor and outdoor use areas) at the rate set forth in Section 30.80.030;
5. No more than three restaurants shall be permitted per lot, including existing restaurant tenants; and
6. All changes in use must comply with the horizontal zoning requirements of the Central Commercial zone in Section 30.22.030.
7. The provisions of Section 30.80.020(F) shall remain in effect until January 1, 2031. This section may be amended prior to the expiration date based on the results and recommendations of the Parking Management Program described in Section 30.80.020(H). However, if not amended by January 1, 2031, then this section shall become inoperative on January 1, 2031. The January 1, 2031 deadline may be extended for good cause by the Executive Director of the Coastal Commission.

G. A restaurant establishment is permitted to have one accessory food/beverage stand or cart on-site that is not subject to required parking provided that all of the following provisions are met:

1. The stand/cart shall not exceed one hundred square feet in area;
2. The stand/cart shall be open to the air on all sides to the extent possible except where it would preclude compliance with the San Diego County Health Department requirements applicable to food and beverage carts;
3. The parking exemption shall apply to a maximum of one accessory food/beverage stand or cart per lot;
4. The location of the stand/cart shall not interfere with access to required off-street parking spaces; and
5. A Design Review Permit is obtained in accordance with Section 23.08.030.

H. In accordance with LUP Policy IV-29, an inventory of existing parking areas shall be used to develop and implement an overall Parking Management Program (PMP) that shall be revised periodically. The PMP shall be developed and implemented to strengthen and improve parking accessibility and availability in the City and to implement parking management and Transportation Demand Management (TDM) strategies to create a more balanced and efficient parking system that ensures access to the shoreline for a range of visitors and residents. The PMP shall include the following:

1. Existing Conditions & Parking Inventory documenting the characteristics of publicly available on- and off-street parking in the City of Del Mar, the inventory of publicly available on- and off-street parking within the City, and the City's existing parking code requirements and programs to manage parking.
 - a. Identification of sites where commercial tenants with non-conforming parking have modified the use and/or implemented tenant improvements within an existing commercial building per Section 30.80.020(F) and the number of off-street parking spaces provided for the property.
 - b. Identification of sites with new or expanded restaurants that have utilized the outdoor seating exemption per 30.80.030 (c) "Outdoor Dining on Private Property (Accessory to a Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage) outside of the Beach Commercial Zone" where the size of the outdoor seating area exceeds the size of the indoor seating area and the number of off-street parking spaces provided for the property.
2. Parking Occupancy Analysis with a detailed description of occupancy (utilization) counts by both zone and type, parking rate in effect (if applicable), and by time of day and week, emphasizing summer months and including weekends. Data collection shall occur every 2-3 years at least 3 times per PMP update cycle, with the first collection taking place no later than 2024.

3. Parking Demand Analysis of the parking space occupancy rates, existing City parking code requirements, peer city parking rates, and industry standard rates to determine the appropriateness of current minimum parking requirements.
4. Recommendations that analyze the results of the inventory, occupancy, and demand analyses that draw from best practices by peer cities and industry-wide standards as guidance, and have been tailored to address the unique features of Del Mar’s infrastructure, character, and geography.
5. Recommendations that address whether parking programs and services should be adjusted in order to maximize access to the shoreline taking into consideration such factors as future development, environmental justice, biological resources, and reducing vehicle miles traveled, as well as alternatives to private automobile use.
6. The PMP shall be completed no less often than every 10 years, with the next report to be completed no later than January 1, 2030. The January 1, 2030 deadline may be extended for good cause by the Executive Director of the Coastal Commission.

Following identifies prospective DMMC Section 30.80.030 with the CCC modifications shown in strikeout-underline:

Prospective DMMC Section 30.80.030 C. 1. (Required Number of Off-Street Parking Spaces for Non-Residential Uses) would be amended as follows:

No Changes to sections *Commercial Services*- Billiard Parlor through *Pet Services*- Grooming

<p>Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage <u>outside of the Beach Commercial Zone</u></p>	<p>1 space per 200 sq. ft. of GFA up to 5,000 sq. ft. and 1 space for each 90 sq. ft. of GFA in excess of 5,000 sq. ft. (Note: a restaurant is permitted one on-site accessory food/beverage stand or cart that is not subject to required parking in accordance with Section 30.80.020(G).</p> <p><u>The restaurant parking rate provisions of Section 30.80.030(C) shall remain in effect until January 1, 2031. This section may be amended prior to the expiration date based on the results and recommendations of the Parking Management Program described in 30.80.020(H). However, if not amended by January 1, 2031, then the parking requirements shall be as shown for within the Beach Commercial Zone. The January 1, 2031</u></p>
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	<p><u>deadline may be extended for good cause by the Executive Director of the Coastal Commission.</u></p>
<p><u>Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage located in the Beach Commercial Zone</u></p>	<p><u>1 space per 90 sq. ft. of GFA up to 4,000 sq. ft. and 1 space for each 45 sq. ft. of GFA in excess of 4,000 sq. ft. including all outdoor space, covered or uncovered, used for any restaurant purpose (Note: a restaurant is permitted one on-site accessory food/beverage stand or cart that is not subject to required parking in accordance with Section 30.80.020(G)).</u></p>
<p><u>Outdoor Dining on Private Property (Accessory to a Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage) outside of the Beach Commercial Zone</u></p>	<p>No additional parking requirement if outdoor seating area is equal to or less than the indoor seating area.</p> <p>For any outdoor seating area that exceeds the indoor seating area, parking shall be provided at a rate of 1 space per 200 sq. ft., for the excess outdoor area.</p> <p><u>The outdoor dining parking provisions of Section 30.80.030(C) shall remain in effect until January 1, 2031. This section may be amended prior to the expiration date based on the results and recommendations of the Parking Management Program described in 30.80.020(H). However, if not amended by January 1, 2031, then the parking requirements shall be as shown for within the Beach Commercial Zone. The January 1, 2031 deadline may be extended for good cause by the Executive Director of the Coastal Commission.</u></p>

No changes to Sports & Recreation Club/Facility through Industrial/Manufacturing/Laboratory/Wholesale Printing.

Following identifies the LCP Land Use Plan policies as amended to incorporate the CCC modifications shown in strikeout-underline:

Changes to the City's Land Use Policy:

~~IV-30 The City shall apply the following Off Street Parking Regulations to assure that the parking needs generated by new development are provided on-site as indicated in the City's certified LCP Chapter 30.80.~~

REMOVE OFF_STREET PARKING REGULATIONS PAGES 80-84

REPLACE WITH:

IV-30 Provide parking for residents, visitors, and employees as part of new development in accordance with the City's certified Implementation Plan.

IV-31 Provide and manage parking so that it is reasonably available when and where it is needed, without significantly impacting coastal resources or public access to coastal amenities and facilities.

IV-32 To help reduce parking demand, consider flexibility in parking requirements such as shared parking opportunities, improved public transit services, reduced auto ownership, provision of car sharing opportunities, or other means, provided that public access is not reduced.

IV-33 Reduce the amount of land devoted to parking through measures such as parking structures, shared parking, and managed public parking while still providing appropriate levels of parking to maintain access to the shoreline.

IV-34 Where potential for significant transportation impacts is identified for proposed development, require implementation of transportation demand management (TDM) strategies as a mitigation tool to improve mobility, reduce congestion and parking demand, and reduce vehicle miles traveled (VMT), greenhouse gas emissions, and air pollution. The City shall actively encourage and, where appropriate to avoid impacts to public access and circulation, require development to implement incentives and programs to increase the use and availability of sustainable transportation (e.g., carpooling, bicycles, public transit, rail service, walking) such as the provision of employee transit passes or subsidies, ridesharing programs, bike racks, on-site showers and lockers, and similar measures.



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Matt Bator, AICP, Principal Planner
Karen Brindley, Planning and Community Development Director
Via Ashley Jones, City Manager

DATE: June 5, 2023

SUBJECT: An Ordinance to Regulate Two Unit Residential Development and Urban Lot Split Projects in Accordance with California Senate Bill 9 (SB 9)

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that the City Council introduce an Ordinance (Attachment A) adding Del Mar Municipal Code (DMMC) Chapters 30.93, 24.66, 23.07; amending DMMC Chapters 30.75, 30.10, 30.11, 30.12, 30.13, 30.14, and 30.15; and adopting a Local Coastal Program Amendment to establish procedures, objective development standards, and objective design standards to regulate Two Unit Residential Development and Urban Lot Split projects in accordance with California Senate Bill 9 (SB 9).

BACKGROUND:

On September 16, 2021, the Governor signed SB 9 into law which went into effect January 1, 2022, as follows:

- Government Code Section 65852.21 requires cities to process proposed housing development containing a maximum of two dwelling units on single dwelling zoned lots through a ministerial review process (without discretionary review or a public hearing) if the proposed housing development meets certain qualifying criteria.
- Government Code Section 66411.7 allows the subdivision of qualifying lots in single dwelling unit zones to ministerially process a tentative parcel map for an “Urban Lot Split” to subdivide one lot into two separate lots and allows development of a maximum of two dwelling units on each resulting lot.
- SB 9 mandates a ministerial review and approval process and allows the City to impose objective zoning, subdivision, and design standards on such projects if those standards do not physically preclude the construction of two, 800-square-foot units on a new and/or existing lot.

City Council Action:

- SB 9 must be implemented consistent with the California Coastal Act.

As a result, the City initiated a Zone Code Amendment, Municipal Code Amendment, and a Local Coastal Program Amendment to add DMMC Chapters 23.07 and 30.93 to implement the new SB 9 subdivision and development regulations, and address ancillary amendments in DMMC Chapter 30.75 (Coastal Development Permits) and Chapters 30.10, 30.11, 30.12, 30.13, 30.14, and 30.15 (Single Dwelling Unit Base Zones).

The draft Ordinance was published for public review with the Notice of Availability for the Local Coastal Program Amendment on April 20, 2023. SB 9 information and materials related to the draft ordinance were provided for public review via a dedicated webpage on the City's website at [Senate Bill 9 Development | Del Mar, CA - Official Website](#).

Planning Commission

On March 14, 2023, the Planning Commission received a staff presentation, discussed, and considered the draft Ordinance to implement the State mandated SB 9 regulations and Objective Design Standards. The Planning Commission voted unanimously to continue the item to allow staff time to address questions and comments from the Commission and provide additional public outreach.

Following the Planning Commission meeting, staff revised the City's SB 9 informational webpage and added a SB 9 Fact Sheet with a list of frequently asked questions to increase public awareness and participation in the review of the draft SB 9 ordinance. Staff also published newsletter articles, sent electronic notifications regarding the review process and upcoming public hearings, and made announcements at the April 2023 Planning Commission and City Council meetings.

At the Planning Commission hearing on May 9, 2023, the Commission considered the revised draft regulations (Attachment B) and public input. The public input, primarily provided in written form, was generally supportive of the regulatory standards and suggested several modifications, which are discussed later in this report. The Commissioners were in general agreement with the revised Ordinance; however, there was consensus that the implementation of SB 9 regulations is an opportunity to provide for affordable housing production and the regulations should require all or some of the potential units be deed restricted to moderate or lower income households.

During the May Planning Commission meeting, the Assistant City Attorney indicated that the SB 9 legislation did not include an affordability provision. Therefore, the City could include a requirement that a portion of the units be affordable, but requiring all of the units be dedicated for affordable housing could be considered a barrier to housing development, and would not be supported by the State. Staff and the Assistant City Attorney also indicated that the current Affordable Housing Mitigation regulations (DMMC Chapter 24.21) do not provide the ability to require that SB 9 projects dedicate one or

more of the units as affordable housing (i.e., inclusionary housing). However, it was conveyed that the City will be updating the Inclusionary Housing regulations in 2024 and that those regulations could be structured to include SB 9 projects. The Planning Commission voted 4-0-1 (Commissioner Farrell abstained) to recommend City Council approval of the draft Ordinance with a provision to require that SB 9 projects be subject to an inclusionary housing affordability component and include the “conditions precedent” clause.

As referenced above, implementation of the affordability requirement is contingent on amending the Inclusionary Housing regulations to reflect the new affordability provisions. Once the Inclusionary Housing Ordinance is adopted and effective (anticipated in early 2024), SB 9 projects (non-lot splits and lot-split) would be subject to the affordability requirement proposed in the SB 9 Ordinance as DMMC sections 30.93.050(C)(3) and 30.93.050(H)(5). The “conditions precedent” in the SB 9 Ordinance would not be enforceable until the needed revisions to the City’s Inclusionary Housing Ordinance are adopted and enforceable.

As revised in consultation with the City Attorney’s Office, the proposed Ordinance would require that every SB 9 project dedicate at least one affordable unit and would be subject to recordation of an affordability deed restriction on the respective lot for that unit that would remain in place for 55 years. The standards for affordability are governed by the California Health and Safety Code Sections 50105(a) and 50079.5. These affordable standards are set out in the majority of State housing regulations. The deed restriction would be reviewed and approved by the City and all transfers of land and their associated affordable units would be subject to the deed restriction.

DISCUSSION/ANALYSIS:

To bring the City’s development regulations into compliance with State law for SB 9 related projects, most of the Municipal Code language proposed reflects State law (Government Code § 66452.6, 65852.21, and 66411.7). However, SB 9 permits the City Council to adopt objective zoning, subdivision, and design standards as necessary to reflect local conditions. Staff has indicated those objective standards within the discussion below.

Following is a summary of the most significant changes required per State law:

Ministerial process for approval: The City is required to review two primary dwelling units and/or an Urban Lot Split on single dwelling unit zoned properties through a ministerial review process. A ministerial review process includes only objective zoning, tentative map, and design standards and does not allow for discretionary level of review that is typical for most of development in the City. As such SB 9 projects will be exempt from the City’s Design Review Ordinance. The City may deny an SB 9 application when the proposed project would fail to comply with applicable objective requirements or would have a specific

and adverse impact upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid that impact. DMMC Chapters 30.93, 24.66, 23.07, and 30.75 are proposed to address the procedures and regulations for SB 9 projects, consistent with State law.

Zones where Two Unit Residential Development and Urban Lot Splits are permitted: SB 9 projects are only permitted within single dwelling zoned lots, or R1 properties (R1-40, R1-14, R1-10, R1-10B, R1-5, R1-5B).

Areas where Two Unit Residential and Urban Lot Splits would be prohibited: Due to public health and safety concerns, protection of coastal resources, protection of access to coastal resources, and preservation of historic resources, two unit residential and urban lots splits would be prohibited in the following areas applicable to Del Mar:

- Coastal Bluff Overlay Zone;
- Bluff, Slope and Canyon Overlay Zone;
- Lagoon Overlay Zone;
- Open Space Overlay Zone;
- Historic Preservation Overlay Zone;
- Carmel Valley Precise Plan (CVPP)
- Lots located within the North Beach District, as identified in the Community Plan, due to sea level rise vulnerability and limited public access to coastal resources and recreation;
- Special Flood Hazard Area identified on the 2019 FEMA Flood Insurance Rate Map (FIRM); and
- Very High Fire Severity areas that do not have at least two emergency evacuation routes.

Additional areas of exclusion from eligibility are listed in the proposed Ordinance (Attachment A). A draft eligibility map for SB 9 development and Urban Lot Splits is included as Attachment C.

SB 9 Allowances: On a lot in a single-dwelling-unit zone that meets the qualifying location criteria as listed above, SB 9 law requires cities to allow up to four units, either on one existing R1 zoned lot or when an Urban Lot Split is proposed.

When an Urban Lot Split is not proposed, SB 9 law requires cities to allow up to four units on the property. To reach the four-unit count, the units can be in combination of SB 9 dwelling units, Accessory Dwelling Units (ADUs) and/or Junior Accessory Dwelling Units (JrADUs). However, with an ordinance in place, the City can propose objective standards to minimize impacts to R1 zoned neighborhoods when four units are proposed. For example, a proposed revision has been added to the draft Ordinance under DMMC Section 30.93.050(B) that requires all ADUs to be detached from primary dwelling units to mitigate potential coastal and environmental impacts and ensure compatibility with adjacent properties.

When an Urban Lot Split is proposed, SB 9 allows up to two dwelling units on each resulting lot, for a total of four units. Without an ordinance in place, the City could be required to allow up to four units on each resulting lot. However, with an adopted ordinance the City may preclude ADUs and JrADUs when a lot split occurs; therefore, the draft Ordinance prohibits ADU and JrADU development for Urban Lot Splits. If there are existing ADUs or JrADUs on either resulting lot, those units shall be considered a primary dwelling when counted as one of the two allowed units. For demonstration purposes, exhibits depicting several, but not all, potential unit/ADU configurations of SB 9 development are included as Attachment D.

- **Two Unit Residential Development:**

The proposed Ordinance includes DMMC Section 30.93.050, which identifies development standards for Two Unit Residential Development and other key standards:

- The maximum permitted density on a single dwelling zoned lot is two “primary” dwelling units under SB 9. The dwelling units may be attached or detached from one another, provided that the structure(s) meet the building code safety standards. SB 9 law requires that cities allow up to two primary dwellings on a qualifying lot and each dwelling must be allowed at least 800 square feet of building area. To ensure that the City’s Ordinance will provide flexibility for mitigating potential neighborhood compatibility issues and incentivize the use the base zoning setbacks, staff is proposing that primary dwelling units ranging from 801-1,000 square feet would be allowed when designed to accommodate the base zoning setback requirements. When utilizing the four-foot rear and side yard setback requirements mandated by SB 9, the maximum allowed primary dwelling unit size would be 800 square feet. This standard would be reflected in DMMC Sections 30.93.050 (A)(3) and (A)(6)(b) of the draft Ordinance.
- Height is limited to 16 feet, as measured pursuant to existing requirements per DMMC Section 30.04.080(a).

- Roof decks and basements are prohibited on any SB 9 dwelling unit.
- Setbacks:
 - When an existing structure is converted into a new dwelling unit, the new unit may be constructed in the same location when it is within the same dimensions of the existing structure and may continue to observe the same setbacks as the structure that was replaced;
 - As noted above, SB 9 dwelling units between 801-1,000 square feet in area must comply with the setbacks of the base zoning designation. An 800-square-foot dwelling proposed as an SB 9 compliant structure, shall not be closer than four feet from an interior side or rear property lines, as allowed by State law; and
 - New dwelling units must comply with front and street side yard setbacks of the base zoning designation.
- Any building features and accessory structures that are not consistent with the draft Objective Design Standards (Chapter 23.07), and are not otherwise required by the California Building Code for a dwelling unit shall be subject to the objective requirements of Design Review in accordance with DMMC Chapter 23.08.
- One parking space, located outside of underlying setbacks, is required for each unit unless the parcel is within one-half mile walking distance to a high-quality transit-corridor, as defined in Public Resources Code Section 21155, or a major transit stop as defined in Public Resources Code Section 21064.3, or there is a car share vehicle located within one block of the project. A major transit stop is defined as an existing rail or bus rapid transit station or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. Currently, the City does not have any major transit stops and therefore, any SB 9 development will be required to provide one on-site parking space per unit. Furthermore, to be consistent with the City's Local Coastal Program and to ensure continued coastal access for the public, if a SB 9 project proposes to convert an existing garage or required parking, replacement parking shall be provided on-site in accordance with the requirements of DMMC Chapter 30.80 and the California Coastal Act.
- A deed restriction is required for the development of a SB 9 unit requiring that any unit that is rented must be more than 30 consecutive days. Rental terms shall not terminate prior to the expiration of at least one 31-day period by the same tenant.

- As mentioned earlier in this report, an additional deed restriction shall memorialize and disclose any affordability requirements resulting from and required by a future update of the City's Inclusionary Housing Ordinance.
- Dwelling units resulting from SB 9 development may not be conveyed separately unless located on a lot created by an Urban Lot Split, in which case, all units on that lot must be conveyed together.
- **Urban Lot Split:** The following are key standards for Urban Lot Splits:
 - Urban Lot Splits must provide easements or street frontage for the provision of public services and utilities.
 - Access to the public right-of-way for each resulting lot shall be provided.
 - Access to the proposed lot is limited to 20 feet in width.
 - One of the two resulting lots cannot be any smaller than 40 percent of the lot area of the original lot, and neither lot can be smaller than 1,200 square feet in area:
 - Each resulting lot can accommodate up to two dwelling units only and the homeowner shall not exercise both SB 9 and ADU law to construct four units when subdividing under an Urban Lot Split. Unit configurations for new lots resulting from a lot split may consist of:
 - Two 800-1,000 square-foot SB 9 units;
 - One SB 9 unit and an existing single-family dwelling; or
 - An existing single-family dwelling with either an ADU or JrADU. In such case, the existing ADU or JrADU would become the second allowed unit on the newly formed lot.
 - Any subsequent subdivision or Urban Lot Split for a property that was previously subdivided by an Urban Lot Split is prohibited.
- **Objective Design Standards:** Because State law requires ministerial review and only allows cities to apply objective standards for SB 9 projects, objective design standards are important for local agencies to impose to ensure impacts from State mandated residential development in single dwelling zones are minimized. As such, the draft Ordinance contains the comprehensive draft of the Objective Design Standards that were derived from the City's existing and adopted Single-Family Residential Design Guidelines to maintain the community character within the existing single dwelling zoned properties as much as possible. Objective design standards are specific, uniformly verifiable, and involve no personal or subjective judgement.

Staff reviewed the draft Objective Design Standards with the Design Review Board at a noticed special meeting on December 14, 2022. The Design Review Board generally had concerns about the potential view impacts and the possibility of regulating view preservation through an objective standard. However, staff discussed that due to the case-by-case nature of each property regarding existing site conditions and topography, creating a standardized, objective requirement to regulate views would not be feasible and would be inconsistent with State law.

Below are some examples subjective standards from the City’s existing Design Guidelines for Single-Family Design that have been revised to be objective for the purposes of SB 9 development.

OBJECTIVE STANDARDS	SUBJECTIVE STANDARDS
No wall, structure, plant material, or other object that exceeds 42 inches shall be erected or placed within a triangular area formed by measuring 10 feet from an intersecting driveway, street, or alley in a manner as to obstruct or impeded vision	Any fencing or vegetation proposed to be planted adjacent to a driveway should be chosen and located to maintain adequate sight lines to and from the property.
HVAC units and associated screening equipment shall be located at ground level a minimum four feet from a property line and shall provide a motor blanket.	HVAC and exterior mechanical equipment should be fully screened from view from a public right-of-way and located in a manner that would meet the City’s Noise Ordinance.
All exterior lighting shall be fully shielded with shut off controls or sensors, timers, or motion detectors and lamp color for all lighting shall be a maximum 2,700 kelvin.	The source of a light should not be visible from adjacent properties or public rights-of-way.
Homes shall have a maximum 10-foot plate height.	Tall plate heights that add to the volume of a structure should be avoided.

PRIOR CITY COUNCIL REVIEW:

On December 7, 2021, the City Council unanimously adopted Resolution 2021-52, affirming that until the California Coastal Commission certifies a Local Coastal Program Amendment for the implementation ordinance for SB 9 development, the City is unable to make the required Local Coastal Program consistency findings for a Coastal Development Permit for SB 9 projects. Therefore, the City would not be accepting Coastal Development Permit applications for SB 9 development until the implementation ordinance is adopted by the City Council and the Local Coastal Program Amendment is certified by the California Coastal Commission.

CORRESPONDENCE:

As of the writing of this report, no written comments to the City Council have been received. However, prior to the May 9, 2023, Planning Commission hearing several public comments related to the draft SB 9 regulations/ordinance were submitted and considered by staff and the Planning Commission (Attachment E).

The comments were generally supportive of the draft Ordinance. However, one of the emails received raised concern with the City's application of overlay zones in regulating eligibility for use of SB 9 when applying for development and lot splits (subdivisions). In response to this concern, staff notes that the municipal code chapters that create the overlay zones, including the Floodplain and Bluff/Slope/Canyon are Implementing Ordinances of the City's Local Coastal Program, and compliance with the City's LCP requires preservation of coastal resources in those areas.

A second email received from the above-mentioned resident recommends the City consider allowing a larger maximum unit size, incentivizing property owners to adhere to existing "base" zoning standards. After reviewing the potential benefit of such a standard and consulting with City Attorney, staff revised the draft Ordinance that was considered by the Planning Commission to include an allowable SB 9 primary dwelling unit size ranging from 800-1,000 square feet, dependent on whether base zoning setbacks are proposed for the dwelling. While this would allow for a slightly larger primary dwelling unit on a lot, this allowance could be utilized to mitigate other potential neighborhood compatibility issues.

Another email suggested several modifications to the draft Ordinance based on standards and regulations found in the SB 9 ordinances for the cities of Laguna Beach and Santa Barbara. Some of the suggestions, such as those related to affordable housing requirements and setbacks, have been addressed in this report. Others, such as limiting lot coverage or floor area ratio (FAR) could result in inconsistencies with the State Code, which requires the allowance of at least an 800 square foot primary unit under any circumstance for an SB 9 eligible lot and limit other restrictions that can be imposed, such as parking requirements. However, included was a suggestion that the City apply an affordability component to SB 9 dwelling unit development, which the Planning Commission is recommending to the City Council. As previously discussed in this report, this provision has been included in the draft Ordinance and will become effective at such time as the updated Inclusionary Housing Ordinance becomes effective.

HOUSING IMPACT: This proposed legislative action will facilitate the potential development of new opportunities for housing consistent with the City's adopted 6th Cycle Housing Element Program 6B and will provide opportunities to Affirmatively Further Fair Housing (AFFH).

FISCAL IMPACT:

There is no fiscal impact or action to be taken by the City Council related to this agenda item.

ENVIRONMENTAL IMPACT:

The proposed City Council action is exempt from review under the California Environmental Quality Act (CEQA; Public Resources Code Section 21000 et. seq.) and CEQA regulations (Title 14 of California Code Regulations Section 15000 et. seq.) pursuant to Government Code Sections 65852.21(j) and 66411.7(n), because the adoption of an ordinance to implement SB 9 shall not be considered a project under Division 13 of the Public Resources Code.

NEXUS TO CITY COUNCIL GOALS AND PRIORITIES:

Development and adoption of an Ordinance to regulate SB 9 development and subdivisions (Urban Lot Splits) was identified as a priority project in the FY 2022-2023 Operating and Capital Budget.

ATTACHMENTS:

- Attachment A – Proposed Ordinance
- Attachment B – Planning Commission Resolution PC-2023-02
- Attachment C – SB 9 Eligibility Map
- Attachment D – Potential Unit Configuration Exhibits
- Attachment E – May 9, 2023, Planning Commission Correspondence

ATTACHMENT A

ORDINANCE NO. XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, ADOPTING NEW CHAPTERS 30.93, 24.66, 23.07; AMENDING CHAPTERS 30.75, 30.10, 30.11, 30.12, 30.13, 30.14, AND 30.15 OF THE CITY OF DEL MAR MUNICIPAL CODE, AND LOCAL COASTAL AMENDMENT (ZA22-003/A22-001/LCPA22-003) ESTABLISHING THE PROCEDURES AND OBJECTIVE STANDARDS FOR THE DEVELOPMENT OF TWO UNIT RESIDENTIAL DEVELOPMENT AND URBAN LOT SPLITS ON SINGLE DWELLING ZONED PROPERTIES IN ACCORDANCE WITH SENATE BILL 9

WHEREAS, commonly referred to as “Senate Bill 9,” CA Gov. Code Sec. 66452 et seq. requires local agencies to ministerially process and review the development of two dwelling units, referred herein as “Two Unit Residential Development” on lots zoned for single dwelling units; and

WHEREAS, additionally, Senate Bill 9 requires local agencies to ministerially review “Urban Lot Splits”, which allow for the subdivision of a lot that is zoned for a single dwelling unit into two lots for the maximum development of two dwelling units on each resulting lot; and

WHEREAS, the proposed revisions to the Del Mar Municipal Code (DMMC) are necessary to make City’s regulations consistent with Senate Bill 9 and the Coastal Act. Senate Bill 9 limits the ability of local jurisdictions to impose subjective development standards on Two Unit Residential Development and Urban Lot Splits when the proposed projects meet certain development criteria; and

WHEREAS, the Design Review Board held a duly noticed special meeting to review the draft Objective Design Standards on December 14, 2022, and the Design Review Board provided feedback that necessitated revisions that are now incorporated into the Ordinance; and

WHEREAS, to implement these regulations a Local Coastal Program Amendment will require the certification by the California Coastal Commission; and

WHEREAS, the City posted, published, and mailed a Notice of Availability of the draft Local Coastal Amendment for public review on February 23, 2023, in accordance with California Code of Regulations Section 13515 requirements for public participation and agency coordination for Local Coastal Program Amendments: and

WHEREAS, on March 14, 2023, the Planning Commission held a duly noticed public hearing to review the proposed Zoning Code Amendments, Municipal Code Amendments, and Local Coastal Program Amendment related to the City’s new Senate Bill 9 regulations, at which time the staff report was presented, public testimony was

received, and the Planning Commission unanimously voted to continue the public hearing in order for staff to make revisions to the draft Ordinances; and

WHEREAS, the draft Ordinance has been undergoing refinement since 2021 and City staff has coordinated with California Coastal Commission staff, City Council's Housing Subcommittee, and the Design Review Board. At the March 14, 2023 Planning Commission meeting the C asked staff to take actions to increase public participation, as a result Staff revised the City's SB 9 informational website and included a Fact Sheet with a list of frequently asked questions, distributed newsletter articles, sent E-Notification of the review process and upcoming public hearings, and made announcements at the April 2023 Planning Commission and City Council meetings.

WHEREAS, the City posted, published, and mailed a Notice of Availability of the draft Local Coastal Amendment for public review on April 20, 2023, in accordance with California Code of Regulations Section 13515 requirements for public participation and agency coordination for Local Coastal Program Amendments; and

WHEREAS, on May 9, 2023, the Planning Commission held a second duly noticed public hearing to review the revisions made to the draft Ordinance and at which time the Planning Commission adopted Resolution No. PC 2023-02 recommending that the Del Mar City Council adopt an ordinance to amend Del Mar Municipal Code and Local Coastal Program; and

WHEREAS, the City Council of the City of Del Mar has determined that this action is exempt from review under the California Environmental Quality Act (CEQA; Public Resources Code Section 21000 et. seq.) and CEQA regulations (Title 14 of California Code Regulations Section 15000 et. seq.) pursuant to Government Code Sections 65852.21(j) and 66411.7(n), because the adoption of an ordinance to implement SB 9 shall not be considered a project under Division 13 of the Public Resources Code. Pursuant to the exemptions listed above, Zone Code Amendment (ZA22-003), Municipal Code Amendment (A22-001) and Local Coastal Program Amendment (LCPA22-003) is hereby recommended to the City Council for approval; and

WHEREAS, Senate Bill 9 through its legislative mandates results in changed conditions that warrant additional zoning changes to Zone Code Amendment (ZA22-003) and the Ordinance reflects that cities are to ministerially process two dwelling unit development on single-unit-zoned lots or Urban Lot Splits on single-unit-zoned lots. The proposed Zone Code Amendment provides regulations to ministerially process SB 9 projects consistent with State law while ensuring objective standards preserve the community character of the City's single-unit-zoned neighborhoods and allows the City to mitigate any adverse impacts to coastal resources and public health; and

WHEREAS, Zone Code Amendment (ZA22-003) is necessary to implement State law and as such, the City Council has determined that Zone Code Amendments to

accommodate Senate Bill 9 to be in the interest of furtherance of public health, safety, comfort, convenience and general welfare, and will not adversely affect the established character of the surrounding neighborhoods, nor be injurious to other properties in the vicinity of the Two Unit Development or Urban Lot Splits. Furthermore, proposed objective development standards are consistent with California Building Code and California Fire Code regulations; and

WHEREAS, the Zone Code Amendment conforms to the general purpose, planned use, and intent of the adopted Community Plan, and any ordinance, regulation, or plan in effect that implements the Community Plan as identified in the below:

a. Community Development Element:

- i. Goal 3(A)(4) – Limit building height to two stories in all residential areas, prohibit three story facades, and encourage single story development in areas where two-story construction would be disruptive to neighborhood character and scale of development.
- ii. Goal 3(D)(1) – Protect existing moderate cost housing from unnecessary redevelopment to more expensive housing by maintaining strict floor area to lot area limitations.
- iii. Goal 3(F)(1) – Encourage harmonious development which is in scale with the character of existing development.

b. Housing Element:

- i. Goal #1 - Facilitate a Variety of Housing Strategies to Meet Housing Element Production Targets in a Way That Complements the Existing Character of the Community.
- ii. Goal #4 – Provide an Economically and Socially Diverse Balance of Housing Options that are Affordable for a Variety of Income Levels and Housing Needs.
- iii. Goal #6 – Ensure a Sustainable Approach to New Housing Opportunities that Protects the Quality of Life and Future of Del Mar.

Zone Code Amendment ZA22-003 establishes regulations that will implement Senate Bill 9 in conformance with the above-cited Community Plan Goals, Objectives, and Policies. The proposed Amendments include objective development standards that limit the height of a dwelling unit to 16 feet or one-story, which requires single story development within the single-unit-zoned neighborhoods. This will ensure development will not be disruptive to existing neighborhood character and scale while meeting the intent of State law.

Furthermore, units developed under the proposed Amendments are limited to 800-1,000 square feet, facilitating more affordably constructed units and increasing the variety of housing opportunities available for the community. Based on the intent of Senate Bill 9 to provide additional housing stock and increase housing options and opportunities for a diverse range of the population, the Ordinance provides that at least one primary unit will contain an affordability covenant that will run with the land and ensure affordability to very-low to low income households once the City's Inclusionary Housing Ordinance is amended.

NOW THEREFORE, the City Council of the City of Del Mar does hereby ordain as follows:

SECTION ONE

That a new Chapter of the Municipal Code be added as follows:

Chapter 30.93 – Regulations for Development of Two Unit Residential Development on Single Residential Zoned lots or Urban Lot Splits for Single Residential Zoned Lots

30.93.010 - Purpose and Intent.

The purpose of this Chapter is to implement California Government Code Sections 65852.21 and CA. Gov. Code Section 2. 66411.7.(commonly referred to as: SB 9) and to establish objective design standards for the development of residential structures on single residential zoned lots conforming to State law. Should State law change, the City reserves the right to make further modifications to these standards to bring this Chapter in conformity with new State requirements.

The intent of this Chapter is to comply with the requirements of State housing laws, while retaining the character of the City's single-dwelling neighborhoods. Equal to meeting these housing law obligations is ensuring that no unavoidable adverse impacts occur to the public health, safety, or general welfare of its residents or to the City's sensitive coastal resources.

This Chapter prescribes objective standards for the approval of such units and Urban Lot Splits and the circumstances in which a development may be prohibited. For example, the proposed development may be denied because it may conflict with the California Coastal Act of 1976 or where the proposed development is located within a Severe Wildfire Hazard Area or Flood Zone. Finally, should this Chapter conflict with State law then State law will have precedence over the regulations contained in this Chapter.

30.93.020 - Definitions.

Senate Bill 9 (SB 9) means a state law passed by the California State Senate and approved by the Governor on September 16, 2021. The legislation amends Government Code Section 66452.6 and adds Government Code Sections 65852.21 and 66411.7.

Senate Bill 9 (SB 9) Development Project means a project proposing the development of Two Primary Dwelling Units and/or an Urban Lot Split pursuant to SB 9.

Two Unit Residential Development means a proposed SB 9 housing development that includes no more than two residential units developed on one lot that is currently zoned as single residential. And where two primary dwelling units are each designed with separate and fully functioning: Living, sleeping, eating, cooking, and as amenities and connected to sanitation and other utilities. The residential units must be independent living structures used by one or more persons, and where neither unit requires the use of the other unit's living amenities or utilities.

Urban Lot Split means a parcel map subdivision that creates no more than two new parcels of approximately equal lot area, but in no case smaller than 40 percent of the other subject lot, and where both lots meet the requirements of this Chapter and Chapter 24.66. Both newly created parcels are to be no smaller than 1,200 square feet.

Unit means any dwelling unit, including, but not limited to, a unit or units created pursuant to Government Code Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Government Code Section 65852.2, or a junior accessory dwelling unit as defined in Government Code Section 65852.22.

Acting in Concert with the Owner means a person that has common ownership or control of the subject parcel with the owner of the adjacent parcel, a person acting on behalf of, acting for the predominant benefit of, acting on the instructions of, or actively cooperating with, the owner of the parcel being subdivided.

30.93.030 - Applicability.

- A. This Chapter applies to proposed development on properties located within a single dwelling unit zone (R1-40, R1-14, R1-10, R1-10B, R1-5, R1-5B), except as prohibited per Section (B).
- B. To ensure that no adverse unavoidable impacts occur to public health and safety, coastal resources, or impede public access to coastal resources, proposed development in locations listed below shall not be eligible to utilize or benefit from this Chapter. Where such circumstances apply all existing discretionary review processing requirements, zoning requirements, and maximum density per the General Plan and certified Local Coastal Program shall apply where the:

1. Proposed development is located on a lot that is either prime farmland or farmland of statewide importance, as defined pursuant to United States of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.
2. Proposed development on lots containing wetlands or their buffers, as defined by the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993 or as revised), or other environmentally sensitive habitats as defined by Section 30.75.030, including those lands that have been conserved by dedication in fee title, easement covenants, or other forms of conservation easements.
3. Proposed development that is located on a lot having habitat for protected species identified as either a candidate, sensitive, or species of special status by state or federal agencies, or otherwise fully protected species, or species protected by the Federal Endangered Species Act of 1973 (16 U.S.C Sec 1531 et seq. or as amended), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), which includes but is not limited to proposed development located on any one of the following Overlay zones:
 - a. Coastal Bluff Overlay Zone
 - b. Bluff, Slope, and Canyon Overlay Zone
 - c. Lagoon Overlay Zone
 - d. Open Space Overlay Zone
 - f. Historic Preservation Overlay
4. Proposed development on a lot that falls entirely or partially within a mapped Special Flood Hazard Area identified on the 2019 FEMA Flood Insurance Rate Map or as revised ("FIRM").
5. Consistent with existing codes, proposed development on a lot that falls entirely or partially within a mapped Very High Fire Hazard Severity Zone and does not have at least two emergency evacuation routes, an evacuation map specific to the parcel, or that cannot otherwise be mitigated to avoid loss of human life.

6. Proposed development on a lot within a delineated earthquake fault zone as determined by the State Geologist in adopted maps published by the California State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
7. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.
8. The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Government Code Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.
9. Proposed development that would require demolition of an existing dwelling unit that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income; or a dwelling unit that has been occupied by a tenant in the last three years. An applicant must demonstrate whether an existing house on a property implementing an Urban Lot Split or altered to accommodate two dwelling units was owner occupied or rented by a tenant to the Director's satisfaction, including but not limited to the execution of an affidavit that is subject to the laws of perjury.
10. Proposed development that requires the demolition of more than 25 percent of the existing exterior structural walls of a dwelling unit unless the existing unit has not been occupied by a tenant in the last three years from the date of application submittal. Dwelling units not occupied by a tenant in the last three years from the date of application submittal shall be limited to a maximum 50 percent demolition of existing exterior structural walls.
11. Projects proposing an Urban Lot Split shall not be eligible to construct Accessory Dwelling Units or Junior Accessory Dwelling Units consistent with Government Code Section 65852.21 and Section 65852.2. Each resulting lot shall not contain more than two dwelling units. For Urban Lot

Splits with an existing Accessory Dwelling Unit or a Junior Accessory Dwelling Unit onsite, those units shall be considered dwelling units for the purposes of this Chapter.

12. On sites that have been established through prior entitlement of an Urban Lot Split; or when the owner of a parcel being subdivided and any person acting in concert with the owner, has previously subdivided an adjacent parcel using an Urban Lot Split as provided for in this Chapter.
13. Proposed development located within the North Beach District as identified in the Community Plan that due to flood hazards, limited public access to coastal resources, and impediments to public recreation.

30.93.040 - Permit Review Required to Utilize the Provisions of this Chapter.

- A. An applicant seeking to utilize the provisions of this Chapter may propose development in accordance with the primary dwelling unit regulations in Section 30.93.050, Section 30.93.060, Chapter 23.07, and Chapter 24.66.
- B. Any application pursuant to this Chapter may be denied by the City upon the making of written findings establishing by a preponderance of the evidence that the proposed development would have a specific, adverse impact upon public health and safety, coastal resources, or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety:

1. Inconsistency with the zoning ordinance or general plan land use designation.
2. The eligibility to claim a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code.

30.93.050 - Development of Two Unit Residential Development in Accordance with this Chapter.

A lot in a single dwelling unit zone that meets the criteria in Section 30.93.030 shall be permitted to develop up to two primary dwelling units per lot by submitting an application for an Administrative Coastal Development Permit. The issuance of an Administrative Coastal Permit will not require any public hearings. The application shall be consistent with Section 30.75.080(E) and meet the following requirements:

- A. The development regulations of the base zone in which the lot is located shall apply, except as otherwise specified in this Section:
1. The maximum permitted density shall be two dwelling units per lot. Units developed subject to this Section shall not be separately conveyed.
 2. The dwelling units may be attached to or detached from one another, provided that the structure(s) meet building code safety standards.
 3. Individual dwelling units developed in accordance with this Chapter shall not exceed a range of 800-1,000 square feet, as further defined in Section 30.93.050(A)(6)(b) of this Chapter.
 4. Dwelling units developed in accordance with this Chapter shall be one-story and shall not exceed 16 feet in height, as measured pursuant to DMMC Section 30.04.080 (a), Excluded features are any new roof decks or balconies located upon a new structure.
 5. Basements, as defined by DMMC Section 30.04.020 (c), are not permitted.
 6. Setbacks:
 - a. An existing accessory building structure may be converted to a dwelling unit regardless of its existing location with respect to the property line. A new dwelling unit that is constructed in the same location and to the same dimensions as an existing accessory building structure may continue to observe the same setbacks as the structure it replaced.
 - b. New primary dwelling unit structures that comply with the setbacks of the base zone and the minimum six-foot building separation per DMMC Section 30.86.200 (I). shall be allowed 801-1,000 square feet of building area. A primary dwelling unit with a maximum gross floor area of 800 square feet shall not be permitted closer than four feet from interior side and rear property lines.
 - c. New dwelling unit structures must comply with the front and street side yard setbacks of the base zoning designation.
 7. Dwelling units, including exterior building features and accessory structures must comply with the Objective Design Standards pursuant to Chapter 23.07. Dwelling units, exterior building features and accessory structures that are not consistent with Chapter 23.07 and are not otherwise required by the California Building Code for a dwelling unit shall be subject to the objective requirements of Design Review in accordance with Chapter 23.08.

8. Parking:
 - a. One parking space is required for each unit created pursuant to this Chapter, unless the parcel upon which the unit is within one-half mile walking distance of a high-quality transit-corridor, as defined in Public Resources Code Section 21155, or a major transit stop, as defined in Public Resources Code Section 21064.3, or there is a car share vehicle located within one block of the project. The required parking spaces may be enclosed or unenclosed.
 - b. In order to ensure continued and to ensure that all coastal access remains unimpeded to all members of the public, if a two-unit residential development replaces an existing garage or other required parking, replacement parking spaces shall be provided on-site in accordance with the requirements of DMMC Chapter 30.80 and the California Coastal Act. The new parking space(s) may be covered or uncovered.
 - c. Unenclosed or enclosed parking spaces shall not be located within required setback areas and shall be located on an improved surface such as but not limited to paving, hardscape, or decomposed granite. If an applicant cannot comply with this requirement due to physical site constraints, the applicant shall provide all necessary information required by the City to reasonably demonstrate that it is infeasible to provide the required parking outside of the required setback area.
 - d. The design of parking spaces shall comply with DMMC Section 30.80.060.
- B. Accessory dwelling units consistent with Government Code Section 65852.21 and Section 65852.2 proposed in conjunction with dwelling units subject to this Section and are not subdivided through an Urban Lot Split shall be detached from primary dwelling units and shall maintain a minimum six feet separation from other structures onsite. Junior Accessory Dwelling Units shall be contained within the existing or proposed floor area of a primary dwelling unit.
- C. Prior to the issuance of a building permit for a Two Unit Residential Development, the owner shall record a deed restriction with the County Recorder and file the recorded deed restriction with the City, acknowledging the applicable use limitations that shall run with the land. The deed restriction shall include the following text:
 1. A lot that utilizes the provisions of this Section shall be limited to residential uses only.

2. Rental of units shall be for a term more than thirty (30) consecutive days. Rentals of 30 days or less are prohibited. Rental terms shall not allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant or related tenant.
3. Upon the occurrence of inclusion of these requirements into and consistent with DMMC Title 24, at least one of the primary dwelling units in a Two Unit Residential Development subject to this Chapter shall be rented or sold to very low or lower income households, as defined by Sections 50105(a) or 50079.5 of the CA Health and Safety Code. In a form approved by the City, any transfers of land inclusive of the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with this Chapter and shall remain in place for not less than 55 years.

30.93.060 - Regulations for Urban Lot Splits Located in Zones for Single Dwelling Lots.

- A. A parcel located in single dwelling unit zone(s) that meet the applicability criteria set forth in Section 30.93.020, shall be permitted to subdivide an existing lot into no more than two separately conveyable lots, herein referred to as an “Urban Lot Split,” by the owner submitting an application for an Administrative Coastal Development Permit in accordance with Section 30.75.080(E) and a Parcel Map in accordance with Chapter 24.66, without the requirement of a public hearing. Only legally established lots subdivided through an Urban Lot Split are allowed to be separately conveyed. Individual dwelling units located within a SB 9 lot split shall not be conveyed or sold separately.
- B. The proposed Urban Lot Split shall comply with the requirements in Chapter 30.75 applicable to processing of an Administrative Coastal Development Permit.
- C. The Director of Planning and Community Development shall approve, conditionally approve, or deny an Urban Lot Split within 50 days after the tentative map has been deemed complete.
- D. Urban Lot Splits shall be limited to a maximum of two dwelling units per each lot. Lots subdivided under an Urban Lot Split are not eligible for Accessory Dwelling Units or Junior Accessory Dwelling Units. For Urban Lot Splits that contain existing Accessory Dwelling Units or Junior Accessory Dwelling Units onsite, those units shall be considered a dwelling unit for the purposes of this Chapter.
- E. New construction for Two Unit Residential Development on lots created under an Urban Lot Split shall comply with the objective development standards contained within the underlying zoning designation, Section 30.93.50, and Chapter 23.07.

- F. A lot that utilizes the provisions of this Section shall be limited to residential uses only. The dwelling units shall not be rented for less than 30 days. Rental terms shall not allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant or related tenant.
- G. Prior to the recordation of the parcel map for an Urban Lot Split, the owner shall record a deed restriction with the County Recorder and file the recorded deed restriction with the City, acknowledging the applicable use limitations that shall run with the land. The deed restriction shall include the following text:
1. The record owner shall reside in one of the dwelling units on either of the lots created by the Urban Lot Split as their primary residence for a minimum of three years from the date of approval of the Urban Lot Split. This requirement shall not apply to an applicant that is a “community land trust,” as defined in California Revenue and Taxation Code Section 402.1(a)(11)(C)(ii) or is a “qualified nonprofit corporation” as described in California Revenue and Taxation Code Section 214.15.
 2. Rental of units shall be of a term of more than 30 consecutive days or less are prohibited. Rental terms shall not allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant or related tenant.
 3. A maximum of two dwelling units shall be permitted on each lot, either as two primary units, or a primary unit and an Accessory Dwelling Unit, or a primary unit and a Junior Accessory Dwelling Unit; however, at no time shall an entitled Urban Lot Split exercise all provisions in Government Code Sections 65852.21, 66411.7, and 65852.2.
 4. Any subsequent Urban Lot Split of land that was previously subdivided by an Urban Lot Split shall be prohibited.
 5. Upon the occurrence of inclusion of these requirements into and consistent with DMMC Title 24, at least one of the approved units on each subdivided lot shall be subject to this Chapter and shall be rented or sold to very low or lower income households, as defined by Sections 50105(a) or 50079.5 of the CA Health and Safety Code. In a form approved by the City, any transfers of subdivided land and inclusive of any affordable unit shall be subject to a deed restriction ensuring continued affordability of the units consistent with this Chapter and shall remain in place for not less than 55 years.

30.93.070 – Severability.

Should a court of competent jurisdiction determine that these regulations are void or if certain terms or provision are voided, then those regulations shall either become void in their entirety or where the courts have determined that certain terms or provision are void by operation of the law then those terms and provisions shall have no force or effect.

SECTION TWO

That a new Chapter of the Municipal Code be added as follows:

Chapter 24.66 – Urban Lot Split.

24.66.010 - Urban Lot Split Requirements.

Every applicant proposing an Urban Lot Split (in accordance with Government Code Sections 66452.6, 65852.21, and 66411.7) shall submit a tentative parcel map that complies with the procedures and requirements contained in this Chapter, Chapter 30.93, and the submittal of an application for an Administrative Coastal Development Permit in accordance with Chapter 30.75.

24.66.020 - Preparation of Urban Lot Split Map.

An Urban Lot Split application shall be prepared by or under the direction of a registered civil engineer or licensed surveyor, and shall show the location of streets, easements, and property lines bounding the subject property and shall conform to the following provisions:

- A. The provisions of Section 66445 of the Subdivision Map Act.
- B. Contain a definite description of the land subdivided by references to recorded deeds, deed restrictions, recorded maps and official United States surveys. Reference to tracts, recorded deeds and recorded maps shall be clearly defined, worded consistently with officially recorded records, and show the book and page of records and related map numbers.
- C. Show the basis of bearings used, the relationship of said bearings to the true meridian, and the north arrow of said map shall appear on each street thereof.
- D. Show a solid line separating private ways, easements and other rights-of-way not to be accepted as public streets and shown on said map from public streets, and clearly designate their nature and the manner in which the right is reserved or granted.
- E. Each tentative map shall depict all contiguous property owned by the subdivider and shall contain the following information:

1. Name and address of the owner whose property is proposed to be subdivided and the name and address of the subdivider.
2. Name and address of registered civil engineer or licensed surveyor, who prepared the map.
3. North arrow.
4. Scale.
5. Date of preparation.
6. The location, width and proposed names of all streets within the boundaries of the proposed subdivision and approximate grades thereof and point of access from each lot.
7. Locations and width of alleys.
8. Names, location and width of adjacent streets.
9. Lot lines and approximate dimensions and numbers of each lot.
10. Approximate location and width of watercourses of areas subject to inundation from floods, and location of structures, irrigation ditches and other permanent features.
11. Approximate contours at two-foot intervals.
12. Approximate location of existing buildings and permanent structures.
13. Location of all major vegetation showing size and type.
14. Legal description of the exterior boundaries of the subdivisions.
15. Width and location of all existing and proposed public or private easement, for example utilities and bicycle paths.
16. Classification of lots as to be intended residential, commercial, industrial or otherwise.
17. Location of railroads and rights-of-way.
18. Approximate radii of curves.
19. Any proposed phasing by units.
20. Number of units to be constructed when a condominium or community apartment project is involved.

21. At the time a vesting tentative map is filed, it shall have printed conspicuously on its face the words "Vesting Tentative Map."

22. Locations of existing structures within the subdivision and structures outside the subdivision but within 25 feet of the subdivision boundaries.

F. Shown either on the proposed tentative map or an accompanying document shall be the information regarding the following matters:

1. Source of water supply.
2. Type of street improvement and utilities which the subdivider proposes to install.
3. Proposed method sewage disposal, including location of facilities.
4. Proposed storm water sewer or other means of drainage, including the location of such facilities.
5. Protective covenants to be recorded.
6. Proposed tree plantings.
7. Landscaping and irrigation conceptual plans.

24.66.30 - Application.

- A. A subdivider applying for an Urban Lot Split shall file a completed application with the Planning Division, together with copies of a tentative parcel map. An applicant for an Urban Lot Split shall sign and submit with the application an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of approval of the Urban Lot Split; or if new development is proposed for a Two Unit Residential Development, from the date when the Planning and Community Development Department issues its final occupancy permit.
- B. The Planning and Community Development Department and City Engineer shall not accept an application or map for processing unless the Department finds that the Urban Lot Split is consistent with the applicable zoning provisions, State law, and that all approvals and permits required by the City zoning provisions for the project have been approved.

- C. The Planning and Community Development Department shall not accept an application or map for an Urban Lot Split unless it is submitted together with an Administrative Coastal Development Permit in accordance with Chapter 30.75.
- D. Notwithstanding the provision of subsection B of this section, an Urban Lot Split may be processed concurrently with documents, permits, or approvals required by the zoning provisions, if the applicant first waives the time limits for processing, approving, or conditionally approving or disapproving an Urban Lot Split provided by this chapter or the Subdivision Map Act.

24.66.40 - Information to be filed with Urban Lot Split Map.

Such information as may be prescribed by the rules and regulations approved by the City Council and such additional information as the City Engineer may find reasonably necessary with respect to any particular case to implementing provisions of this Chapter and shall accompany the Urban Lot Split at the time of submission, including a certificate of an engineer or land surveyor in accordance with Section 66449 of the Subdivision Map Act.

24.66.050 - Requirements for Urban Lot Split Map.

- A. The Urban Lot Split shall comply with all applicable objective requirements of the Subdivision Map Act, except as provided by Government Code Section 66411.7; and the following shall be required as determined by the City Engineer:
 - 1. Easements for the provision of public services and facilities.
 - 2. Both lots shall provide primary vehicular access to and from a public street.
 - 3. Panhandle lots or easements to access the proposed lot shall be a maximum of 20 feet.
- B. Offsite improvements fees, directly related to an Urban Lot Split, may be imposed to make the subdivision function properly and ensure its feasibility, such as but not limited to requiring the construction of: Driveways, curbs, gutters, or sidewalk improvements as reasonably determined by the City Engineer.
- C. Urban Lot Splits shall be limited to a maximum of two dwelling units on each lot. Lots subdivided under an Urban Lot Split are not eligible for additional Accessory Dwelling Units or Junior Accessory Dwelling Units if the lot contains existing Accessory Dwelling Units or Junior Accessory Dwellings. Those existing accessory dwelling units shall be considered dwelling units for the purposes of this Chapter.

- D. Development of dwelling units proposed on lots created by an Urban Lot Split shall comply with all applicable objective standards contained within the underlying zoning designation, objective subdivision standards, and Objective Design Standards in Chapter 23.07. However, applicable objective standards may be reduced if the standards would have the effect of physically precluding the construction of two, 800-square-foot, dwelling units on each resulting parcel created pursuant to this chapter. In no case shall such accommodation conflict with the minimum lot requirements per the Subdivision Map Act.
- E. Urban Lot Splits shall comply with Chapter 24.21 – Dedication: Affordable Housing Mitigation.
- F. The minimum lot area and minimum lot dimension regulations of the base zone shall be waived and replaced with the following regulations:
 - 1. The two parcels created shall be approximately equal in size, provided that one lot shall not be any smaller than 40 percent of the lot area of the original lot.
 - 2. The two lots shall be no smaller than 1,200 square feet in lot area for each lot.
 - 3. New unit sizes shall not be greater than 800 square feet. Maps shall show the footprints of existing and proposed structures.
- G. Dwelling units constructed on a lot subdivided by an Urban Lot Split shall be subject to and comply with the objective development standards specified in the underlying zoning designation, Chapter 30.93, and Chapter 23.07.
- H. A lot may not utilize the Urban Lot Split provisions of this Chapter and Chapter 30.93 if any of the following apply:
 - 1. The lot was established through a prior Urban Lot Split in accordance with this Section.
 - 2. The record owner or any person acting in concert with the record owner has previously subdivided an adjacent lot using an Urban Lot Split in accordance with this Section.
- I. Prior to the recordation of the parcel map for an Urban Lot Split, the owner shall record a deed restriction with the County Recorder and file the recorded deed

restriction with the City, acknowledging the applicable use limitations that shall run with the land. The deed restriction shall include the following text:

1. The record owner shall reside in one of the dwelling units on either of the lots created by the Urban Lot Split as their primary residence for a minimum of three years from the date of approval of the Urban Lot Split. This requirement shall not apply to an applicant that is a “community land trust,” as defined in California Revenue and Taxation Code Section 402.1(a)(11)(C)(ii) or is a “qualified nonprofit corporation” as described in California Revenue and Taxation Code Section 214.15.
 2. Rental of units shall be of a term of more than 30 consecutive days or less are prohibited. Rental terms shall not allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant or related tenant.
 3. A maximum of two dwelling units shall be permitted on each lot, either as two primary units, or a primary unit and an Accessory Dwelling Unit, or a primary unit and a Junior Accessory Dwelling Unit; however, at no time shall an entitled Urban Lot Split exercise all provisions in Government Code Sections 65852.21, 66411.7, and 65852.2.
 4. Any subsequent Urban Lot Split of land that was previously subdivided by an Urban Lot Split shall be prohibited.
- J. This Chapter applies to proposed Urban Lot Split subdivisions on properties located within a single dwelling unit zone (R1-40, R1-14, R1-10, R1-10B, R1-5, R1-5B), except as prohibited per Section (I).
- K. To ensure that no adverse unavoidable impacts occur to public health and safety, coastal resources or impede public access to coastal resources, proposed development in locations listed below shall not be eligible to utilize or benefit from this Chapter. Where such circumstances apply all existing discretionary review processing requirements, zoning requirements, and maximum density per the General Plan and certified Local Coastal Program shall apply where the:
1. Proposed development is located on a lot that is either prime farmland or farmland of statewide importance, as defined pursuant to United States of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or

designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

2. Proposed development on lots containing wetlands or their buffers, as defined by the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993 or as revised), or other environmentally sensitive habitats as defined by Section 30.75.030, including those lands that have been conserved by dedication in fee title, easement covenants, or other forms of conservation easements.
3. Proposed development that is located on a lot having habitat for protected species identified as either a candidate, sensitive, or species of special status by state or federal agencies, or otherwise fully protected species, or species protected by the Federal Endangered Species Act of 1973 (16 U.S.C Sec 1531 et seq. or as amended), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), which includes but is not limited to proposed development located on any one of the following Overlay zones:
 - a. Coastal Bluff Overlay Zone
 - b. Bluff, Slope, and Canyon Overlay Zone
 - c. Lagoon Overlay Zone
 - d. Open Space Overlay Zone
 - f. Historic Preservation Overlay
4. Proposed development on a lot that falls entirely or partially within a mapped Special Flood Hazard Area identified on the 2019 FEMA Flood Insurance Rate Map or as revised ("FIRM").
5. Consistent with City codes, proposed development on a lot that falls entirely or partially within a mapped Very High Fire Hazard Severity Zone and does not have at least two emergency evacuation routes, an evacuation map specific to the parcel, or that cannot otherwise be mitigated to avoid loss of human life.
6. Proposed development on a lot within a delineated earthquake fault zone as determined by the State Geologist in adopted maps published by the California State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards

Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

7. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.
8. The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Government Code Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.
9. Proposed development that would require demolition of an existing dwelling unit that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income; or a dwelling unit that has been occupied by a tenant in the last three years. An applicant must demonstrate whether an existing house on a property implementing an Urban Lot Split or altered to accommodate two dwelling units was owner occupied or rented by a tenant to the Director's satisfaction, including but not limited to the execution of an affidavit that is subject to the laws of perjury.
10. Proposed development that requires the demolition of more than 25 percent of the existing exterior structural walls of a dwelling unit unless the existing unit has not been occupied by a tenant in the last three years from the date of application submittal.
11. Projects proposing an Urban Lot Split on a lot that contains an Accessory Dwelling Unit or Junior Accessory Dwelling Unit, unless the applicant converts one existing ADU or JADU per lot to a primary dwelling unit and removes all other ADUs or JrADUs in compliance with this Chapter. When proposing an Urban Lot Split, an applicant must choose whether to use the provisions of this Chapter or the provisions of the ADU and JADU regulations consistent with Government Code Section 65852.21 and Section 65852.2 but shall not use both. In either case, each resulting lot shall not contain more than two units and each proposed primary unit must be no more than 800 square feet in floor area.

12. On sites that have been established through prior entitlement of an Urban Lot Split; or when the owner of a parcel being subdivided and any person acting in concert with the owner, has previously subdivided an adjacent parcel using an Urban Lot Split as provided for in this Chapter.
13. Proposed development located within the North Beach District as identified in the Community Plan that due to flood hazards, limited public access to coastal resources, and impediments to public recreation.

24.66.060 - Grading Plan.

There shall be filed with an Urban Lot Split a grading plan showing any grading proposed for the creation of building sites within the subdivision or for construction of improvements to serve the subdivision. The grading plan together with the original topographical contours must be shown on the tentative map for an Urban Lot Split. This plan shall indicate approximate earthwork volumes of proposed excavation and filing operations. In the event no such grading is proposed, a statement to that effect shall be filed with the tentative map.

24.66.070 - Preliminary Title Report.

There shall be filed with the tentative map a current preliminary title report for the property being subdivided.

24.66.080 - Planning and Community Development Director – Duties.

The Planning and Community Development Director is authorized and directed to carry out the following duties concerning applications for Urban Lot Split under this chapter which include the following:

- A. Obtain the recommendations of other City departments, or other governmental agencies as may be deemed appropriate or reasonably necessary by the City Engineer in order to carry out the provision of this chapter; and
- B. Consider all recommendations and the results of all investigations and ministerially approve or disapprove the application.

24.66.090 - Consideration of Urban Lot Split Map – Notice of Decision.

Within 50 calendar days after a complete application for an Urban Lot Split Map is filed, the Director of Planning and Community Development shall ministerially approve or disapprove such map. The time limit specified in this section may be extended by mutual consent of the applicant and the city. If the Urban Lot Split is disapproved, the reasons therefore shall be stated in the notice of disapproval.

24.66.100 - Revised Urban Lot Split.

- A. Where an applicant proposes to revise or alter a submitted proposed Urban Lot Split application for which a tentative map has been previously approved by the Director of Planning and Community Development, the applicant may file with the Planning Department a revised Urban Lot Split application including the payment of established fees.
- B. A revised tentative map for an Urban Lot split shall conform to the following requirements:
 - 1. The proposed subdivision shown on such map shall generally conform to the street and lot pattern shown on the approved tentative map.
 - 2. The proposed subdivision shown on such map shall include only one contiguous area consisting of all or a portion of the subdivision shown on the approved tentative map together with such additional land, if any, as the subdivider desires to include.
 - 3. The revised tentative map shall contain all of the information required on previously approved tentative map and shall be accompanied by such data as is required to be filed with the proposed new tentative map.
 - 4. A revised tentative map shall be filed with the City within 24-months from the final approval of the previous tentative map. Extension of time must be requested by the applicant to the Director of Planning and Community Development prior to the expiration of the 24-month map revision timeframe. Extensions of time are at the sole discretion of the Director of Planning and Community Development.
 - 5. Upon the filing of a revised tentative map and payment of the prescribed fees, such revised tentative map shall be treated in all respects as an original tentative map and shall be reported on, approved, conditionally approved, or disapproved, in the same manner as the previously approved tentative map, provided, however, that the applicant shall have 12 months from the approval or conditional approval of the original tentative map within which to obtain final map approval, unless such period is extended pursuant to this Chapter, in which case, the applicant shall obtain final map approval within the period of any such extension.

24.66.110 - Disapproval of Urban Lot Split.

The Director of Planning and Community Development shall not approve an Urban Lot Split under the following circumstances:

- A. Based on a preponderance of the evidence that the proposed subdivision would have a specific, adverse impact upon public health and safety, coastal resources, or the physical environment (including but not limited to sensitive coastal resources and public access) and where there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
- B. The land proposed for subdivision is a lot or parcel which was part of an Urban Lot Split that the City previously approved.
- C. The subdivision proposes creation of more than two lots or more than two units per lot.
- D. If the Urban Lot Split does not meet the requirements of this Chapter or that all approvals or permits required by this Chapter for the project have not been issued.
- E. Failure to comply with applicable, objective requirements of the Subdivision Map Act and this Chapter.

24.66.120 - Expiration/Extension of Urban Lot Split.

The expiration of the Urban Lot Split shall be in accordance with Government Code Section 66452.6 or as revised and the following:

- A. A tentative map shall expire 24 months after its approval or conditional approval.
- B. Upon application received by the Planning Department at least 60 days prior to the expiration of the tentative map, the Director of Planning and Community Development, at their sole discretion, may extend the time of expiration for a period or periods not to exceed six years.

24.66.130 – Transmittal of Urban Lot Split to County Recorder.

Upon the approval of an Urban Lot Split by the Director of Planning and Community Development, the applicant or its agent shall transmit the map to the San Diego County Recorder's Office and ensure the timely recording of the Tentative Map. An Urban Lot Split subject to Section 66493 of the Subdivision Map Act shall be processed in compliance with Government Code Section 66464(b).

24.66.140 – Severability.

Should a court of competent jurisdiction determine that these regulations are void or if certain terms or provision are voided, then those regulations shall either become void in their entirety or where the courts have determined that certain terms or provision are void by operation of the law then those terms and provisions shall have no force or effect.

SECTION THREE

That a new Chapter of the Municipal Code be added as follows:

23.07 - Objective Design Standards for Residential Development

23.07.010 – Purpose

- A. In response to a declared housing crisis, the State of California established various mandates in State Housing law that require streamlining of permit applications through an administrative process at the city level, including limitations that require objective design standards for certain types of housing development.
- B. The purpose of this Chapter is to set forth the City’s objective design standards where the City is precluded by State law from applying discretionary design review and other permit approval processes identified in Chapter 23.08.
- C. The intent of this Chapter is to facilitate the permitting process for proposed housing development consistent with State law and to implement the City’s Community Plan (General Plan) in a manner that harmonizes adopted local policies with State law.

23.07.020 – Applicability and Process for Approval

- A. All residential development referred to in this Chapter shall be processed in accordance with a ministerial permit approval process and reviewed without discretionary review or public hearings.
- B. Chapter 23.07 shall apply to proposed multiple dwelling unit housing development within the Housing Element Implementation Overlay Zone (Chapter 30.92) and any proposed residential development where the City is precluded by State law from applying discretionary design review and permit approval processes that are identified in Chapter 23.08.
- C. Chapter 23.07 shall also apply to residential development in single dwelling unit zones that are subject to California Government Code Sections 65852.21 and 66411.7, referred to in this Chapter as “Two Unit Residential Development.” As part of the ministerial review, any Two Unit Residential Development shall comply

with the following Objective Design Standards listed in Table A below. For any standard not explicitly identified below, all applicable objective standards of the underlying zoning designation and other objective standards contained in Chapter 30.93 shall apply. Where there are conflicting requirements between the Objective Design Standards below and other requirements within the Del Mar Municipal Code (DMMC), the stricter objective standard shall apply.

- D. Chapter 23.07 shall not apply to proposed Accessory Dwelling Units, which are subject to review and processing in accordance with Chapter 30.91.

23.07.030 – Objective Design Standards for Two Unit Residential Development

- A. If it is not feasible to comply with all applicable Objective Design Standards listed in Table “A” below when constructing up to two, 800-square-foot dwelling units on a property, the applicant shall provide all necessary information requested by the City to reasonably demonstrate that it is infeasible to construct two, 800-square-foot dwelling units if compelled to comply with the City’s Objective Design Standards. Upon review of the applicant’s completed feasibility study, the Director of Planning and Community Development shall determine which of, if any, Objective Design Standards will apply or what standards may be waived to allow for up to two dwelling units that are no more than 800 square feet. The City will also evaluate the application compliance with the California Coastal Act of 1976 and determine if other feasible siting locations reduce impacts environmentally sensitive coastal areas. Additionally, the project may be denied if it will endanger public health or safety or create an unmitigable adverse impacts to the physical environment. At which time the City will produce written findings to the applicant based on the preponderance of evidence that the project will have unavoidable impacts to the public’s health and safety, coastal resources, or the physical environment.
- B. An exterior wall heater and/or air conditioning unit is permitted for a dwelling unit proposed under this Section. Any additional mechanical equipment or exterior building features that are not otherwise required by this Section, Chapter 30.93, or the California Building Code shall be subject to Administrative Design Review in accordance with Section 23.08.035.
- C. To remove, destroy, or move a Protected Tree as defined in Section 23.50.020 to accommodate the construction for a Two Unit Residential Development project shall be subject to the requirements contained in Chapter 23.50.

TABLE A
SB 9 – OBJECTIVE STANDARDS FOR RESIDENTIAL DEVELOPMENT

<p>A. Window Placement</p>	<p>1. Windows shall be located so that sight lines maximize privacy and avoid direct views into neighboring homes. The following shall be employed:</p> <ul style="list-style-type: none"> a) Sizing and placing of windows shall be offset or stagger the window placement from neighboring windows. b) When staggering or offset of windows cannot be achieved, obscured or opaque window glass, clerestory windows, or windows with higher sills shall be used.
<p>B. Neighborhood Compatibility & Setbacks</p>	<p>1. Front setbacks of new homes shall relate to those on adjacent parcels. In cases where setbacks along a street front are uniform, new development shall match those setbacks unless this standard would preclude the construction of a unit size of less than 800 square feet, and in this case, shall conform to the required minimum front and side setback.</p> <p>2. When adjacent lots have nonconforming front yard setbacks, the new development shall conform to the required minimum front yard setback.</p> <p>3. When front yard setbacks are varied in the neighborhood, new homes shall be made to locate the new home with an average setback of the two existing adjacent homes, unless this standard would preclude the construction of a unit size of less than 800 square feet, and in such case, shall conform to the required minimum front setback. No setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.</p> <p>4. Outdoor speakers, televisions or other permanent electronic entertainment features with a mechanically or electronic generated noise are prohibited.</p> <p>5. Exterior HVAC or other mechanical equipment shall be fully screened from view from a public right-of-way or adjacent property and located in a manner that would achieve compliance with the maximum allowed decibel levels of Chapter 9.20 – Noise Regulations.</p> <p>6. HVAC units and other mechanical equipment shall be ground-mounted only. HVAC units and associated screening equipment shall be a minimum of four feet from a side or rear property line. Encroachment</p>

	<p>of a HVAC or mechanical equipment within a front yard or street side yard setback area is prohibited.</p> <p>7. Rooftop decks and balconies are prohibited.</p> <p>8. Attached fireplaces and chimneys shall not project into any required yard setback area. A chimney shall be limited to the minimum height necessary to comply with the California Building Code.</p> <p>9. No part of the dwelling unit, including eaves, cantilevered portions of a dwelling unit, or overhangs shall encroach into a four-foot side and rear setback.</p>
<p>C. Public Safety and Environmental Protection- Hillside Development & Grading</p>	<p>1. To protect coastal resources and reduce wildfire impacts, homes shall not be located at the crest, ridgeline, or the top of a hill. Homes shall not project above the peak of the ridgeline.</p> <p>2. To protect public health and safety, when feasible, utilize a 20-foot setback from the top of slope and a 10-foot setback from the bottom of a substantially steep slope, which are slopes that exceed 25 percent grade (see DMMC Chapter 30.52) for the design and placement of homes to maintain the natural topography and minimize grading.</p> <p>3. Excavation or grading onto a 4:1 slope shall be prohibited.</p> <p>4. Grading shall be limited to the area required for the structure. Any grading outside of the structure shall be subject to the requirements and procedures contained within Chapter 23.33 – Land Conservation Permit.</p>
<p>D. Retaining Walls and Fencing</p>	<p>1. All objective standards for fences contained within Section 30.86.090 – Fences/Retaining Walls apply.</p> <p>2. Retaining walls outside of the building footprint shall be at least four feet from a building wall and shall be fully landscaped and/or provide for a walkway adjacent to the home.</p> <p>3. The distance between two terraced retaining walls shall be, at the minimum, the average of the height of the two walls. Retaining walls shall not exceed four feet in height. The horizontal area between two retaining walls shall be vegetated.</p> <p>4. Retaining walls, block walls, and planters shall be designed with stone, native, or natural appearing materials such as, but not limited to, split face or stone veneer and shall not be unfinished concrete masonry units (CMU) block.</p>

	<p>5. Fences and walls shall follow the natural site topography.</p> <p>6. Retaining walls shall be earth tone colors that match the surrounding natural hues of the hillsides. Use of colors that contrast with the surrounding natural terrain such as white are prohibited. Earth tone is defined as a color scheme that draws from a color palette of browns, tans, warm grays, and greens. The colors in an earth tone scheme are muted and flat in an emulation of the natural colors found in dirt, moss, trees, and rocks.</p> <p>7. Any perimeter fencing on hillside properties shall be visually open with the use of split rail, picket post, or cable.</p> <p>8. Chain-link fencing is prohibited unless it can be fully screened from view with landscaping or is not visible from the public right-of-way or adjacent properties. If chain-link is proposed, it shall be vinyl coated in black or other dark color that matches the natural terrain.</p>
<p>E. Hardscape & Access to Public Right-Of-Ways</p>	<p>1. Access to parking areas shall have one unobstructed, permanently surfaced driveway not less than 10 feet in width. Said driveway width shall not exceed a total maximum of 20 feet along all abutting street lines.</p> <p>2. Hardscape shall not exceed 50 percent of the front yard and street side setback, including driveways and pedestrian walkways.</p> <p>3. Line of sight shall be retained in accordance with Engineering standards. No wall, structure, plant material, or other object that exceeds 42 inches shall be erected or placed within a triangular area formed by measuring 10 feet from an intersecting driveway, street, or alley in a manner as to obstruct or impede vision for automobiles.</p> <p>4. Existing vehicular access and curb cuts shall remain in the existing locations and may be redesigned only if this standard would preclude the construction of a unit less than 800 square feet.</p> <p>5. Unenclosed, on-site parking shall be located outside of a required side, street side yard and front yard setback.</p> <p>6. Circular driveways are prohibited.</p>
<p>F. Water Resource Protection- Landscape and Vegetation</p>	<p>1. New construction shall not be located within the dripline of an environmentally “Protected Tree” as defined in Chapter 23.50.</p>

	<p>2. Trees shall not be planted in a columnar manner. New trees shall be a minimum 24-inch box size and new shrubs shall be a minimum 5-gallon size.</p> <p>3. All landscaping shall be drought tolerant and California native plants.</p> <p>4. All proposed landscaping shall comply with Chapter 23.60 - Water Efficiency Landscape Ordinance (WELO).</p>
G. Architectural Features and Articulation	<p>1. Four-sided (360-degree) architecture shall be incorporated on all building elevations, which include, but are not limited to, variation in massing, roof forms, wall planes, materials, and surface articulation. Material and color changes shall occur at intersecting planes and shall not occur at the outside corners of structures.</p> <p>2. Units shall have an identifiable main entry when approached from the street. Garage doors shall not be the main entry feature. Sliding, retractable, or accordion style doors shall not be used for the main entry of a home.</p> <p>3. Exterior materials shall be siding, stucco, brick, stone, or other similar materials and shall be in an earth tone color. Board-formed, non-colored, concrete, and stained wood with proper fire assemblies may be used for accent walls.</p> <p>4. The maximum allowed enclosed or partially enclosed non-converted garage space shall be limited to 10 feet wide by 20 feet long.</p> <p>5. If an attached garage is proposed, the garage shall be setback five feet from the façade of the proposed dwelling unit.</p> <p>6. Garage doors shall be recessed a minimum of two inches from the face of the garage.</p> <p>7. Wall and roof planes on each elevation must be varied at a minimum of every 20 feet with a projection, offset or recess of the building of at least one foot in depth.</p> <p>8. Dwelling units shall be one-story and a maximum 16 feet in height. Dwelling units shall have a maximum 10-foot plate height.</p> <p>9. Sloped roof materials shall be 30-year minimum composition shingle, tile, natural slate or standing seam metal in a non-reflective color. Flat roofs shall utilize non-reflective materials and colors.</p>

	<p>10. All vents, downspouts, flashing, and electrical conduit shall match the color of the dwelling.</p> <p>11. Development that requires the demolition of an existing dwelling unit shall be limited to 50 percent demolition of the existing exterior structural walls for dwelling units not occupied by a tenant in the last three years.</p>
<p>H. Lighting and Screening</p>	<p>1. All exterior lighting shall be fully shielded with shut off controls or sensors, timers, or motion detectors. Shielded up lighting and fixtures with an adjustable aiming angle are prohibited.</p> <p>2. Exterior building lighting shall be limited to the minimum necessary for compliance with Building Code requirements.</p> <p>3. All exterior lighting proposed, including fixtures and sources shall be certified Dark Sky Friendly by the Fixture Seal of Approval program of the International Dark-sky Association, or be comparable in terms of fixtures that minimize glare, reduce light trespass, and do not pollute the night sky.</p> <p>4. Glass walls (any wall plane consisting of more that 75 percent opaque or transparent glazed surface) that are visible from neighboring homes are prohibited.</p> <p>5. The lamp color or color temperature for all lighting shall be limited to a maximum 2,700 kelvin.</p>
<p>I. Screening</p>	<p>1. Roof penetrations such as stacks, vents, and other roof-mounted equipment shall be located away from view from the public right-of-way. All flashing, sheet metal, vents, and pipe stacks shall be painted to match the adjacent roof or wall material.</p> <p>2. Areas for trash containers shall be incorporated into the building design and located within a garage or fully screened from the public view with walls and landscaping and a lid if the top of the trash bins is not fully covered by the walls. Trash container storage shall be located at the rear or the interior side yard of a property if not located within a garage.</p> <p>3. Foundations and undersides of structures shall be fully screened with compatible materials and colors of the home.</p> <p>4. Mechanical equipment such as backflow preventers shall be screened from public view if located in the front or street side yard setback.</p>

	5. All ground mounted mechanical equipment shall be completely shielded to eliminate noise and screened from view by adjacent properties by use of a wall, view-obscuring fencing and/or landscaping, or enclosed within a building. Screening walls shall be designed to be architecturally consistent with the building design and materials.
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SECTION FOUR

That Municipal Code Chapter 30.74 be amended as follows:

Chapter 30.75 (Coastal Development Permits)

30.75.080 – Coastal Development Permits Issued by the City—Issuing Authority, Public Hearing Required.

A. through D. [No change]

E. The Director of Planning and Community Development shall serve as the Issuing Authority to render a determination on applications for Coastal Development Permits for the following:

1. Projects which qualify for Administrative Design Review pursuant to the provisions of this Title.
2. Applications for Lot Line Adjustments and/or Certificates of Compliance.
3. An application for an Accessory Dwelling Unit in accordance with Subsection 30.91.030.D.5. that is not otherwise exempt from a Coastal Development Permit.
4. Development applications for by-right multiple dwelling units are to be in accordance with the Housing Element Implementation Overlay Zone pursuant to Chapter 30.92.
5. An application for an Urban Lot Split or construction of a Two Unit Residential Development in a single dwelling unit zone in accordance with Chapter 30.93 and Chapter 24.66.

F. [No change]

SECTION FIVE

That Municipal Code Chapter 30.10 be amended as follows:

Chapter 30.10 (Very Low Density Residential (R1-40))

30.10.030 – Allowable Uses.

The allowable uses in the R1-40 Zone are:

- A. A single dwelling unit on each building site; and
- B. An Accessory Dwelling Unit that meets the requirements in Section 30.91.040, or a Junior Accessory Dwelling Unit that meets the requirements in Section 30.91.050.
- C. A Small Community Care Facility on each building site.
- D. Two Unit Residential Development pursuant to Chapter 30.93.

30.10.070 – Development Standards.

- A. [No change]
- B. Lot Dimensions.
 - 1. Minimum lot size: 40,000 square feet.
 - 2. Minimum street frontage: 20 feet.
 - 3. Minimum lot width: 75 feet.
 - 4. Minimum lot depth: 100 feet.
 - 5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66.
- C. [No change]

SECTION SIX

That Municipal Code Chapter 30.10 be amended as follows:

Chapter 30.11 (Modified Low Density Residential (R1-14))

30.11.030 – Allowable Uses.

The allowable uses in the R1-14 Zone are:

- A. A single dwelling unit on each building side; and

- B. An Accessory Dwelling Unit that meets the requirements in Section 30.91.040, or a Junior Accessory Dwelling Unit that meets the requirements in Section 30.91.050.
- C. A Small Community Care Facility on each building site.
- D. Two Unit Residential Development pursuant to Chapter 30.93.

30.11.070 – Development Standards.

A. [No change]

B. Lot Dimensions.

1. Minimum lot size: 14,000 square feet.
2. Minimum street frontage: 20 feet.
3. Minimum lot width: 75 feet.
4. Minimum lot depth: 100 feet.
5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66

C. [No change]

SECTION SEVEN

Chapter 30.12 (Low Density Residential (R1-10))

30.12.030 – Allowable Uses.

The allowable uses in the R1-10 Zone are:

- A. A single dwelling unit on each building side; and
- B. An Accessory Dwelling Unit that meets the requirements in Section 30.91.040, or a Junior Accessory Dwelling Unit that meets the requirements in Section 30.91.050.
- C. A Small Community Care Facility on each building site.
- D. Two Unit Residential Development pursuant to Chapter 30.93.

30.12.070 – Development Standards.

A. [No change]

B. Lot Dimensions.

1. Minimum lot size: 10,000 square feet.
2. Minimum street frontage: 20 feet.
3. Minimum lot width: 75 feet.
4. Minimum lot depth: 100 feet.
5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66.

C. [No change]

SECTION EIGHT

30.13.070 – Development Standards.

A. [No change]

B. Lot Dimensions.

1. Minimum lot size: 10,000 square feet.
2. Minimum street frontage: 20 feet.
3. Minimum lot width: 35 feet.
4. Minimum lot depth: 100 feet.
5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66.

C. [No change]

SECTION NINE

Chapter 30.14 (Medium Density Single-Family Residential (R1-5))

30.14.030 – Allowable Uses.

The allowable uses in the R1-5 Zone are:

- A. A single dwelling unit on each building site.
- B. An Accessory Dwelling Unit that meets the requirements in Section 30.91.040, or a Junior Accessory Dwelling Unit that meets the requirements in Section 30.91.050.
- C. A Small Community Care Facility on each building site.
- D. Two Unit Residential Development pursuant to Chapter 30.93.

30.14.070 – Development Standards.

- A. [No change]
- B. Lot Dimensions.
 - 1. Minimum lot size: 5,000 square feet.
 - 2. Minimum street frontage: 20 feet.
 - 3. Minimum lot width: 50 feet.
 - 4. Minimum lot depth: 90 feet.
 - 5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66.
- C. [No change]

SECTION TEN

Chapter 30.15 (Medium Density Single-Family Residential – Beach (R1-5B))

30.15.030 – Allowable Uses.

The allowable uses in the R1-5B Zone are:

- A. A single dwelling unit on each building site.
- B. An Accessory Dwelling Unit that meets the requirements in Section 30.91.040, or a Junior Accessory Dwelling Unit that meets the requirements in Section 30.91.050.
- C. A Small Community Care Facility on each building site.
- D. Two Unit Residential Development pursuant to Chapter 30.93.

30.15.070 – Development Standards.

- A. [No change]
- B. Lot Dimensions.
 - 1. Minimum lot size: 5,000 square feet.
 - 2. Minimum street frontage: 20 feet.
 - 3. Minimum lot width: 50 feet.
 - 4. Minimum lot depth: 80 feet.
 - 5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66.
- C. [No change]

SECTION ELEVEN

This Ordinance was introduced by the City Council on June 5, 2023.

SECTION TWELVE

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 THIRTEEN

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 FOURTEEN

This Ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Del Mar, California, held on the 19th day of June, 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, NESTOR MACHADO, Acting City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. XXX, 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 June, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Nestor Machado, Acting City Clerk
City of Del Mar

RESOLUTION NO. PC 2023 - 02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DEL MAR, CALIFORNIA, RECOMMENDING ADOPTION OF NEW CHAPTERS 30.93, 24.66, 23.07; AMENDING CHAPTERS 30.75, 30.10, 30.11, 30.12, 30.13, 30.14, AND 30.15 OF THE CITY OF DEL MAR MUNICIPAL CODE, AND LOCAL COASTAL AMENDMENT (ZA22-003/A22-001/LCPA22-003) ESTABLISHING THE PROCEDURES AND OBJECTIVE STANDARDS FOR THE DEVELOPMENT OF TWO UNIT RESIDENTIAL DEVELOPMENT AND URBAN LOT SPLITS ON SINGLE DWELLING ZONED PROPERTIES IN ACCORDANCE WITH SENATE BILL 9

WHEREAS, The California Legislature passed, and the Governor signed Senate Bill 9 into law, which requires local agencies to ministerially review and approve the development of two dwelling units, referred herein as Two Unit Residential Development on lots zoned for single dwelling units, referred to as Senate Bill 9 projects which amended California Government Code Section 66452.6 and added Government Code Sections 65852.21 and 66411.7; and

WHEREAS, The California Legislature passed, and the Governor signed Senate Bill 9 into law, which requires local agencies to ministerially review the subdivision referred to herein as an Urban Lot Split, which allows the subdivision of a lot that is zoned for a single dwelling unit into two lots to develop a maximum of two dwelling units on each resulting lot, referred to as Senate Bill 9 projects which amended California Government Code Section 66452.6 and added Government Code Sections 65852.21 and 66411.7; and

WHEREAS, on December 7, 2021, the City Council adopted Resolution 2021-52 which affirmed that until the California Coastal Commission certifies an amendment to the Del Mar Local Coastal Program to amend the Zoning Code to address the provisions of Senate Bill 9, the City cannot make the required Local Coastal Program consistency findings for any Coastal Development Permit requested for the development of Two Unit Residential Development and Urban Lot Splits on a single dwelling unit zoned lot;

WHEREAS, the State law requires that all local agencies provide a streamlined, ministerial review and approval process for Senate Bill 9 development projects; and

WHEREAS, the proposed revision to the Del Mar Municipal Code (DMMC) is necessary to bring the City's procedures and regulations related to Senate Bill 9 into compliance with State law and to address provisions that limit the ability for local jurisdictions to impose development standards on the development of Two Unit Residential Development and Urban Lot Splits on lots zoned for single dwelling units provided that the projects meet certain criteria to try to provide more housing in the State; and

WHEREAS the provisions of Senate Bill 9 are not applicable in areas that contain environmentally sensitive habitat, sensitive biological resources, and areas that may impede public access to coastal resources and recreation; and

WHEREAS, the Design Review Board held a duly noticed special meeting to review the draft objective design standards on December 14, 2022, and the Design Review Board provided feedback that necessitated revisions that have been incorporated herein; and

WHEREAS the Local Coastal Program Amendment will be subject to review and certification by the California Coastal Commission prior to the Ordinance going into effect; and

WHEREAS the City posted, published, and mailed a Notice of Availability of the draft amendments for public review on February 23, 2023, in accordance with California Code of Regulations Section 13515 requirements for public participation and agency coordination for Local Coastal Program Amendments; and

WHEREAS, on March 14, 2023, the Planning Commission held a duly noticed public hearing to review the proposed Zoning Code Amendment, Municipal Code Amendment, and Local Coastal Program Amendment related to Senate Bill 9 development for Two Unit Residential Development and Urban Lot Splits; and at which time all persons desiring to be heard were heard and the Staff Report was presented, and the Planning Commission voted to continue the public hearing in order for staff to make clarifying revisions to the draft Ordinance; and

WHEREAS preparation and review of the draft Ordinance has been ongoing since 2021 and has consisted of coordination with the California Coastal Commission, City Council, Housing Subcommittee, and Design Review Board. To address Planning Commission's request from the March 14, 2023, public hearing to increase public participation in the review of the draft Ordinance, staff revised the City's SB 9 informational website and included a Fact Sheet with a list of frequently asked questions, distributed newsletter articles, sent E-Notification of the review process and upcoming public hearings, and made announcements at the April 2023 Planning Commission and City Council meetings.

WHEREAS the City posted, published, and mailed a Notice of Availability of the draft amendments for public review on April 20, 2023, in accordance with California Code of Regulations Section 13515 requirements for public participation and agency coordination for Local Coastal Program Amendments; and

WHEREAS, on May 9, 2023, the Planning Commission held a duly noticed public hearing to review the revisions to the draft Ordinance as requested by the Planning Commission at the March 14, 2023, public hearing; and at which time all persons desiring to be heard were heard and the Staff Report was presented; and

WHEREAS, the Planning Commission discussed the importance of providing for affordable housing production and whether the regulations under consideration should require that all or some of the units developed in accordance with Senate Bill 9 in the City of Del Mar should be deed restricted to moderate or lower income households.

WHEREAS, the Planning Commission determined that this action is exempt from review under the California Environmental Quality Act (CEQA; Public Resources Code Section 21000 et. seq.) and CEQA regulations (Title 14 of California Code Regulations Section 15000 et. seq.) pursuant to Government Code Sections 65852.21(j) and 66411.7(n), because the adoption of an ordinance to implement SB 9 shall not be considered a project under Division 13 of the Public Resources Code. Pursuant to the exemptions listed above, Zone Code Amendment (ZA22-003), Municipal Code Amendment (A22-001) and Local Coastal Program Amendment (LCPA22-003) is hereby recommended to the City Council for approval; and

WHEREAS, the Planning Commission's decision is based on the following findings and determinations:

1. There are changed conditions since the previous zoning became effective to warrant other or additional zoning in that Zone Code Amendment (ZA22-003) is necessary to implement Senate Bill 9 (SB 9), a state law that requires cities to ministerially process the development of two dwelling units, referred to herein as Two Unit Residential Development, and Urban Lot Splits on single-dwelling-zoned lots. The proposed Zone Code Amendment provides regulations to ministerially process SB 9 projects in accordance with State law while ensuring objective standards are in place to preserve the character of the City's single-dwelling-zoned neighborhoods and to mitigate any adverse impacts from ministerially approved, higher density development.
2. Zone Code Amendment (ZA22-003) is in the interest of furtherance of public health, safety, comfort, convenience and general welfare, and will not adversely affect the established character of the surrounding neighborhood, nor be injurious to other properties in the vicinity in which the rezoned property is located because the proposed regulations for Two Unit Residential Development and Urban Lot Splits are consistent with State law while ensuring objective standards are required to protect the character of the City's single-dwelling-zoned neighborhoods from adverse impacts. Furthermore, proposed objective development standards such as setbacks from property lines and building separation requirements are consistent with California Building Code and California Fire Code regulations to ensure public health and safety is ensured; and
3. The Zone Code Amendment conforms to the general purpose, planned use, and intent of the adopted Community Plan, or any ordinance, regulation, or plan in effect to implement the Community Plan identified below:
 - a. Community Development:
 - i. Goal 3(A)(4) – Limit building height to two stories in all residential areas, prohibit three story facades, and encourage single story development in areas where two-story construction would be disruptive to neighborhood character and scale of development.

- ii. Goal 3(D)(1) – Protect existing moderate cost housing from unnecessary redevelopment to more expensive housing by maintaining strict floor area to lot area limitations.
- iii. Goal 3(F)(1) – Encourage harmonious development which is in scale with the character of existing development.

b. Housing Element:

- i. Goal (A)(1) – Conserve and improve the community’s existing affordable housing stock.
- ii. Goal(A)(2) – Encourage and support the development of a wide range of housing opportunities.

Based on the above referenced goals of the Community Plan, Zone Code Amendment (ZA22-003) would establish regulations to implement Senate Bill 9, a State law that requires cities to ministerially process development for Two Unit Residential Development and Urban Lot Splits. The proposed amendments include objective development standards that limit the height of a dwelling unit to 16 feet or one-story, which requires single story development within the single-dwelling-zoned neighborhoods. This will ensure development will not be disruptive to the neighborhood character and scale while meeting the intent of State law. Furthermore, units developed under the proposed amendments are limited to 800 square feet, consistent with State law, and will generally be smaller than typical single-dwelling-zoned properties. Therefore, SB 9 units may be more affordable and provide for more variety in housing opportunities for the community.

NOW, THEREFORE, the Planning Commission resolves as follows:

1. The project exemption from CEQA pursuant to 15378 of the CEQA Guidelines and California Government Code §65852.21(j) and 66411.7(n) is hereby recommended to the City Council for approval.
2. The Municipal Code text amendments modifying certain provisions contained in the DMMC, as specified in Attachment A is hereby recommended to the City Council for approval with an additional revision to ensure that SB 9 development projects will be subject to an inclusionary housing affordability requirement, to be included in the Ordinance as a “conditions precedent” clause.
3. Should a court of competent jurisdiction determine that these regulations are void or if certain terms or provision are voided, then these regulations shall either become void in their entirety or where the courts have determined that certain terms or provision are void by operation of the law then those terms and provisions shall have no force or effect.

PASSED AND ADOPTED by the Planning Commission of the City of Del Mar, this **9th**
day of May 2023 by the following vote:

Ayes: Chair Posner, Vice Chair Bakker, Commissioners McGreal and Grewal
Noes: None
Absent: None
Abstain: Commissioner Farrell

ATTEST



Karen Brindley
Director of Planning and Community Development



PHILIP M. POSNER, Chair
Del Mar Planning Commission

SB 9 Implementation – Draft Regulations

(New DMMC) Chapter 30.93 – Regulations for Development of Two Unit Residential Development on Single Residential Zoned lots or Urban Lot Splits for Single Residential Zoned Lots

30.93.010 - Purpose and Intent.

The purpose of this Chapter is to implement California Government Code Sections 65852.21 and CA. Gov. Code Section 2. 66411.7.(commonly referred to as: SB 9) and to establish objective design standards for the development of residential structures on single residential zoned lots conforming to State law . Should State law change, the City reserves the right to make further modifications to these standards to bring this Chapter in conformity with new State requirements.

The intent of this Chapter is to comply with the requirements of State housing laws, while retaining the character of the City’s single-dwelling neighborhoods. Equal to meeting these housing law obligations is ensuring that no unavoidable adverse impacts occur to the public health, safety, or general welfare of its residents or to the City’s sensitive coastal resources.

This Chapter prescribes objective standards for the approval of such units and Urban Lot Splits and the circumstances in which a development may be prohibited. For example, the proposed development may be denied because it may conflict with the California Coastal Act of 1976 or where the proposed development is located within a Severe Wildfire Hazard Area. Finally, should this Chapter conflict with State law then State law will have precedence over the regulations contained in this Chapter.

30.93.020 - Definitions.

Senate Bill 9 (SB 9) means a state law passed by the California State Senate and approved by the Governor on September 16, 2021. The legislation amends Government Code Section 66452.6 and adds Government Code Sections 65852.21 and 66411.7.

Senate Bill 9 (SB 9) Development Project means a project proposing the development of Two Primary Dwelling Units and/or an Urban Lot Split pursuant to SB 9.

Two Unit Residential Development means a proposed SB 9 housing development that includes no more than two residential units developed on one lot that is currently zoned as single residential. And where two primary dwelling units are each designed with separate and fully functioning: Living, sleeping, eating, cooking, and as amenities and connected to sanitation and other utilities. The residential units must be independent living structures used by one or more persons, and where neither unit requires the use of the other unit’s living amenities or utilities.

Urban Lot Split means a parcel map subdivision that creates no more than two new parcels of approximately equal lot area, but in no case smaller than 40 percent of the

other subject lot, and where both lots meet the requirements of this Chapter and Chapter 24.66. Both newly created parcels are to be no smaller than 1,200 square feet.

Unit means any dwelling unit, including, but not limited to, a unit or units created pursuant to Government Code Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Government Code Section 65852.2, or a junior accessory dwelling unit as defined in Government Code Section 65852.22.

Acting in Concert with the Owner means a person that has common ownership or control of the subject parcel with the owner of the adjacent parcel, a person acting on behalf of, acting for the predominant benefit of, acting on the instructions of, or actively cooperating with, the owner of the parcel being subdivided.

30.93.030 - Applicability.

- A. This Chapter applies to proposed development on properties located within a single dwelling unit zone (R1-40, R1-14, R1-10, R1-10B, R1-5, R1-5B), except as prohibited per Section (B).
- B. To ensure that no adverse unavoidable impacts occur to public health and safety, coastal resources, or impede public access to coastal resources, proposed development in locations listed below shall not be eligible to utilize or benefit from this Chapter. Where such circumstances apply all existing discretionary review processing requirements, zoning requirements, and maximum density per the General Plan and certified Local Coastal Program shall apply where the:
 - 1. Proposed development is located on a lot that is either prime farmland or farmland of statewide importance, as defined pursuant to United States of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.
 - 2. Proposed development on lots containing wetlands or their buffers, as defined by the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993 or as revised), or other environmentally sensitive habitats as defined by Section 30.75.030, including those lands that have been conserved by dedication in fee title, easement covenants, or other forms of conservation easements.
 - 3. Proposed development that is located on a lot having habitat for protected species identified as either a candidate, sensitive, or species of special status by state or federal agencies, or otherwise fully protected species, or species protected by the Federal Endangered Species Act of 1973 (16 U.S.C Sec 1531 et seq. or as amended), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish

and Game Code), or the Native Plan Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), which includes but is not limited to proposed development located on any one of the following Overlay zones:

- a. Coastal Bluff Overlay Zone
 - b. Bluff, Slope, and Canyon Overlay Zone
 - c. Lagoon Overlay Zone
 - d. Open Space Overlay Zone
 - f. Historic Preservation Overlay
4. Proposed development on a lot that falls entirely or partially within a mapped Special Flood Hazard Area identified on the 2019 FEMA Flood Insurance Rate Map or as revised (“FIRM”).
 5. Consistent with existing codes, proposed development on a lot that falls entirely or partially within a mapped Very High Fire Hazard Severity Zone and does not have at least two emergency evacuation routes, an evacuation map specific to the parcel, or that cannot otherwise be mitigated to avoid loss of human life.
 6. Proposed development on a lot within a delineated earthquake fault zone as determined by the State Geologist in adopted maps published by the California State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
 7. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.
 8. The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner’s rights under Chapter 12.75 (commencing with Government Code Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

9. Proposed development that would require demolition of an existing dwelling unit that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income; or a dwelling unit that has been occupied by a tenant in the last three years. An applicant must demonstrate whether an existing house on a property implementing an Urban Lot Split or altered to accommodate two dwelling units was owner occupied or rented by a tenant to the Director's satisfaction, including but not limited to the execution of an affidavit that is subject to the laws of perjury.
10. Proposed development that requires the demolition of more than 25 percent of the existing exterior structural walls of a dwelling unit unless the existing unit has not been occupied by a tenant in the last three years from the date of application submittal. Dwelling units not occupied by a tenant in the last three years from the date of application submittal shall be limited to a maximum 50 percent demolition of existing exterior structural walls.
11. Projects proposing an Urban Lot Split shall not be eligible to construct Accessory Dwelling Units or Junior Accessory Dwelling Units consistent with Government Code Section 65852.21 and Section 65852.2. Each resulting lot shall not contain more than two dwelling units. For Urban Lot Splits with an existing Accessory Dwelling Unit or a Junior Accessory Dwelling Unit onsite, those units shall be considered dwelling units for the purposes of this Chapter.
12. On sites that have been established through prior entitlement of an Urban Lot Split; or when the owner of a parcel being subdivided and any person acting in concert with the owner, has previously subdivided an adjacent parcel using an Urban Lot Split as provided for in this Chapter.
13. Proposed development located within the North Beach District as identified in the Community Plan that due to flood hazards, limited public access to coastal resources, and impediments to public recreation.

30.93.040 - Permit Review Required to Utilize the Provisions of this Chapter.

- A. An applicant seeking to utilize the provisions of this Chapter may propose development in accordance with the primary dwelling unit regulations in Section 30.93.050, Section 30.93.060, Chapter 23.07, and Chapter 24.66.
- B. Any application pursuant to this Chapter may be denied by the City upon the making of written findings establishing by a preponderance of the evidence that the proposed development would have a specific, adverse impact upon public health and safety, coastal resources, or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon the public health or safety:

1. Inconsistency with the zoning ordinance or general plan land use designation.
2. The eligibility to claim a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code.

30.93.050 - Development of Two Unit Residential Development in Accordance with this Chapter.

A lot in a single dwelling unit zone that meets the criteria in Section 30.93.030 shall be permitted to develop up to two primary dwelling units per lot by submitting an application for an Administrative Coastal Development Permit. The issuance of an Administrative Coastal Permit will not require any public hearings. The application shall be consistent with Section 30.75.080(E) and meet the following requirements:

- A. The development regulations of the base zone in which the lot is located shall apply, except as otherwise specified in this Section:
 1. The maximum permitted density shall be two dwelling units per lot. Units developed subject to this Section shall not be separately conveyed.
 2. The dwelling units may be attached to or detached from one another, provided that the structure(s) meet building code safety standards.
 3. Individual dwelling units developed in accordance with this Chapter shall not exceed a range of 800-1,000 square feet, as further defined in Section 30.93.050(A)(6)(b) of this Chapter..
 4. Dwelling units developed in accordance with this Chapter shall be one-story and shall not exceed 16 feet in height, as measured pursuant to DMMC Section 30.04.080 (a), Excluded features are any new roof decks or balconies located upon a new structure.
 5. Basements, as defined by DMMC Section 30.04.020 (c), are not permitted.
 6. Setbacks:
 - a. An existing accessory building structure may be converted to a dwelling unit regardless of its existing location with respect to the property line. A new dwelling unit that is constructed in the same location and to the same dimensions as an existing accessory building structure may continue to observe the same setbacks as the structure it replaced.

- b. New primary dwelling unit structures that comply with the setbacks of the base zone and the minimum six-foot building separation per DMMC Section 30.86.200 (I). shall be allowed 801-1,000 square feet of building area. A primary dwelling unit with a maximum gross floor area of 800 square feet shall not be permitted closer than four feet from interior side and rear property lines.
 - c. New dwelling unit structures must comply with the front and street side yard setbacks of the base zoning designation.
- 7. Dwelling units, including exterior building features and accessory structures must comply with the Objective Design Standards pursuant to Chapter 23.07. Dwelling units, exterior building features and accessory structures that are not consistent with Chapter 23.07 and are not otherwise required by the California Building Code for a dwelling unit shall be subject to the objective requirements of Design Review in accordance with Chapter 23.08.
- 8. Parking:
 - a. One parking space is required for each unit created pursuant to this Chapter, unless the parcel upon which the unit is within one-half mile walking distance of a high-quality transit-corridor, as defined in Public Resources Code Section 21155, or a major transit stop, as defined in Public Resources Code Section 21064.3, or there is a car share vehicle located within one block of the project. The required parking spaces may be enclosed or unenclosed.
 - b. In order to ensure continued and to ensure that all coastal access remains unimpeded to all members of the public, if a two-unit residential development replaces an existing garage or other required parking, replacement parking spaces shall be provided on-site in accordance with the requirements of DMMC Chapter 30.80 and the California Coastal Act. The new parking space(s) may be covered or uncovered.
 - c. Unenclosed or enclosed parking spaces shall not be located within required setback areas and shall be located on an improved surface such as but not limited to paving, hardscape, or decomposed granite. If an applicant cannot comply with this requirement due to physical site constraints, the applicant shall provide all necessary information required by the City to reasonably demonstrate that it is infeasible to provide the required parking outside of the required setback area.
 - d. The design of parking spaces shall comply with DMMC Section 30.80.060.

- B. Accessory dwelling units consistent with Government Code Section 65852.21 and Section 65852.2 proposed in conjunction with dwelling units subject to this Section and are not subdivided through an Urban Lot Split shall be detached from primary dwelling units and shall maintain a minimum six feet separation from other structures onsite. Junior Accessory Dwelling Units shall be contained within the existing or proposed floor area of a primary dwelling unit.
- C. Prior to the issuance of a building permit for a Two Unit Residential Development, the owner shall record a deed restriction with the County Recorder and file the recorded deed restriction with the City, acknowledging the applicable use limitations that shall run with the land. The deed restriction shall include the following text:
 - 1. A lot that utilizes the provisions of this Section shall be limited to residential uses only.
 - 2. Rental of units shall be for a term more than thirty (30) consecutive days. Rentals of 30 days or less are prohibited. Rental terms shall not allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant or related tenant.

30.93.060 - Regulations for Urban Lot Splits Located in Zones for Single Dwelling Lots.

- A. A parcel located in single dwelling unit zone(s) that meet the applicability criteria set forth in Section 30.93.020, shall be permitted to subdivide an existing lot into no more than two separately conveyable lots, herein referred to as an “Urban Lot Split,” by the owner submitting an application for an Administrative Coastal Development Permit in accordance with Section 30.75.080(E) and a Parcel Map in accordance with Chapter 24.66, without the requirement of a public hearing. Only legally established lots subdivided through an Urban Lot Split are allowed to be separately conveyed. Individual dwelling units located within a SB 9 lot split shall not be conveyed or sold separately.
- B. The proposed Urban Lot Split shall comply with the requirements in Chapter 30.75 applicable to processing of an Administrative Coastal Development Permit.
- C. The Director of Planning and Community Development shall approve, conditionally approve, or deny an Urban Lot Split within 50 days after the tentative map has been deemed complete.
- D. Urban Lot Splits shall be limited to a maximum of two dwelling units per each lot. Lots subdivided under an Urban Lot Split are not eligible for Accessory Dwelling Units or Junior Accessory Dwelling Units. For Urban Lot Splits that contain existing Accessory Dwelling Units or Junior Accessory Dwelling Units onsite, those units shall be considered a dwelling unit for the purposes of this Chapter.

- E. New construction for Two Unit Residential Development on lots created under an Urban Lot Split shall comply with the objective development standards contained within the underlying zoning designation, Section 30.93.50, and Chapter 23.07.
- F. A lot that utilizes the provisions of this Section shall be limited to residential uses only. The dwelling units shall not be rented for less than 30 days. Rental terms shall not allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant or related tenant.
- G. Urban Lot Splits shall comply with Chapter 24.21 – Dedication: Affordable Housing Mitigation.
- H. Prior to the recordation of the parcel map for an Urban Lot Split, the owner shall record a deed restriction with the County Recorder and file the recorded deed restriction with the City, acknowledging the applicable use limitations that shall run with the land. The deed restriction shall include the following text:
 - 1. The record owner shall reside in one of the dwelling units on either of the lots created by the Urban Lot Split as their primary residence for a minimum of three years from the date of approval of the Urban Lot Split. This requirement shall not apply to an applicant that is a “community land trust,” as defined in California Revenue and Taxation Code Section 402.1(a)(11)(C)(ii) or is a “qualified nonprofit corporation” as described in California Revenue and Taxation Code Section 214.15.
 - 2. Rental of units shall be of a term of more than 30 consecutive days or less are prohibited. Rental terms shall not allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant or related tenant.
 - 3. A maximum of two dwelling units shall be permitted on each lot, either as two primary units, or a primary unit and an Accessory Dwelling Unit, or a primary unit and a Junior Accessory Dwelling Unit; however, at no time shall an entitled Urban Lot Split exercise all provisions in Government Code Sections 65852.21, 66411.7, and 65852.2.
 - 4. Any subsequent Urban Lot Split of land that was previously subdivided by an Urban Lot Split shall be prohibited.

30.93.070 – Severability.

Should a court of competent jurisdiction determine that these regulations are void or if certain terms or provision are voided, then those regulations shall either become void in their entirety or where the courts have determined that certain terms or provision are void by operation of the law then those terms and provisions shall have no force or effect.

(New DMMC) Chapter 24.66 – Urban Lot Split.

24.66.010 - Urban Lot Split Requirements.

Every applicant proposing an Urban Lot Split (in accordance with Government Code Sections 66452.6, 65852.21, and 66411.7) shall submit a tentative parcel map that complies with the procedures and requirements contained in this Chapter, Chapter 30.93, and the submittal of an application for an Administrative Coastal Development Permit in accordance with Chapter 30.75.

24.66.020 - Preparation of Urban Lot Split Map.

An Urban Lot Split application shall be prepared by or under the direction of a registered civil engineer or licensed surveyor, and shall show the location of streets, easements, and property lines bounding the subject property and shall conform to the following provisions:

- A. The provisions of Section 66445 of the Subdivision Map Act.
- B. Contain a definite description of the land subdivided by references to recorded deeds, deed restrictions, recorded maps and official United States surveys. Reference to tracts, recorded deeds and recorded maps shall be clearly defined, worded consistently with officially recorded records, and show the book and page of records and related map numbers.
- C. Show the basis of bearings used, the relationship of said bearings to the true meridian, and the north arrow of said map shall appear on each street thereof.
- D. Show a solid line separating private ways, easements and other rights-of-way not to be accepted as public streets and shown on said map from public streets, and clearly designate their nature and the manner in which the right is reserved or granted.
- E. Each tentative map shall depict all contiguous property owned by the subdivider and shall contain the following information:
 - 1. Name and address of the owner whose property is proposed to be subdivided and the name and address of the subdivider.
 - 2. Name and address of registered civil engineer or licensed surveyor, who prepared the map.
 - 3. North arrow.
 - 4. Scale.
 - 5. Date of preparation.

6. The location, width and proposed names of all streets within the boundaries of the proposed subdivision and approximate grades thereof and point of access from each lot.
 7. Locations and width of alleys.
 8. Names, location and width of adjacent streets.
 9. Lot lines and approximate dimensions and numbers of each lot.
 10. Approximate location and width of watercourses of areas subject to inundation from floods, and location of structures, irrigation ditches and other permanent features.
 11. Approximate contours at two-foot intervals.
 12. Approximate location of existing buildings and permanent structures.
 13. Location of all major vegetation showing size and type.
 14. Legal description of the exterior boundaries of the subdivisions.
 15. Width and location of all existing and proposed public or private easement, for example utilities and bicycle paths.
 16. Classification of lots as to be intended residential, commercial, industrial or otherwise.
 17. Location of railroads and rights-of-way.
 18. Approximate radii of curves.
 19. Any proposed phasing by units.
 20. Number of units to be constructed when a condominium or community apartment project is involved.
 21. At the time a vesting tentative map is filed, it shall have printed conspicuously on its face the words "Vesting Tentative Map."
 22. Locations of existing structures within the subdivision and structures outside the subdivision but within 25 feet of the subdivision boundaries.
- F. Shown either on the proposed tentative map or an accompanying document shall be the information regarding the following matters:
1. Source of water supply.
 2. Type of street improvement and utilities which the subdivider proposes to install.

3. Proposed method sewage disposal, including location of facilities.
4. Proposed storm water sewer or other means of drainage, including the location of such facilities.
5. Protective covenants to be recorded.
6. Proposed tree plantings.
7. Landscaping and irrigation conceptual plans.

24.66.30 - Application.

- A. A subdivider applying for an Urban Lot Split shall file a completed application with the Planning Division, together with copies of a tentative parcel map. An applicant for an Urban Lot Split shall sign and submit with the application an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of approval of the Urban Lot Split; or if new development is proposed for a Two Unit Residential Development, from the date when the Planning and Community Development Department issues its final occupancy permit.
- B. The Planning and Community Development Department and City Engineer shall not accept an application or map for processing unless the Department finds that the Urban Lot Split is consistent with the applicable zoning provisions, State law, and that all approvals and permits required by the City zoning provisions for the project have been approved.
- C. The Planning and Community Development Department shall not accept an application or map for an Urban Lot Split unless it is submitted together with an Administrative Coastal Development Permit in accordance with Chapter 30.75.
- D. Notwithstanding the provision of subsection B of this section, an Urban Lot Split may be processed concurrently with documents, permits, or approvals required by the zoning provisions, if the applicant first waives the time limits for processing, approving, or conditionally approving or disapproving an Urban Lot Split provided by this chapter or the Subdivision Map Act.

24.66.40 - Information to be filed with Urban Lot Split Map.

Such information as may be prescribed by the rules and regulations approved by the City Council and such additional information as the City Engineer may find reasonably necessary with respect to any particular case to implementing provisions of this Chapter and shall accompany the Urban Lot Split at the time of submission, including a certificate of an engineer or land surveyor in accordance with Section 66449 of the Subdivision Map Act.

24.66.050 - Requirements for Urban Lot Split Map.

- A. The Urban Lot Split shall comply with all applicable objective requirements of the Subdivision Map Act, except as provided by Government Code Section 66411.7; and the following shall be required as determined by the City Engineer:
 - 1. Easements for the provision of public services and facilities.
 - 2. Both lots shall provide primary vehicular access to and from a public street.
 - 3. Panhandle lots or easements to access the proposed lot shall be a maximum of 20 feet.
- B. Offsite improvements fees, directly related to an Urban Lot Split, may be imposed to make the subdivision function properly and ensure its feasibility, such as but not limited to requiring the construction of: Driveways, curbs, gutters, or sidewalk improvements as reasonably determined by the City Engineer.
- C. Urban Lot Splits shall be limited to a maximum of two dwelling units on each lot. Lots subdivided under an Urban Lot Split are not eligible for additional Accessory Dwelling Units or Junior Accessory Dwelling Units if the lot contains existing Accessory Dwelling Units or Junior Accessory Dwellings. Those existing accessory dwelling units shall be considered dwelling units for the purposes of this Chapter.
- D. Development of dwelling units proposed on lots created by an Urban Lot Split shall comply with all applicable objective standards contained within the underlying zoning designation, objective subdivision standards, and Objective Design Standards in Chapter 23.07. However, applicable objective standards may be reduced if the standards would have the effect of physically precluding the construction of two, 800-square-foot, dwelling units on each resulting parcel created pursuant to this chapter. In no case shall such accommodation conflict with the minimum lot requirements per the Subdivision Map Act.
- E. Urban Lot Splits shall comply with Chapter 24.21 – Dedication: Affordable Housing Mitigation.
- F. The minimum lot area and minimum lot dimension regulations of the base zone shall be waived and replaced with the following regulations:
 - 1. The two parcels created shall be approximately equal in size, provided that one lot shall not be any smaller than 40 percent of the lot area of the original lot.

2. The two lots shall be no smaller than 1,200 square feet in lot area for each lot.
 3. New unit sizes shall not be greater than 800 square feet. Maps shall show the footprints of existing and proposed structures.
- G. Dwelling units constructed on a lot subdivided by an Urban Lot Split shall be subject to and comply with the objective development standards specified in the underlying zoning designation, Chapter 30.93, and Chapter 23.07.
- H. A lot may not utilize the Urban Lot Split provisions of this Chapter and Chapter 30.93 if any of the following apply:
1. The lot was established through a prior Urban Lot Split in accordance with this Section.
 2. The record owner or any person acting in concert with the record owner has previously subdivided an adjacent lot using an Urban Lot Split in accordance with this Section.
- I. Prior to the recordation of the parcel map for an Urban Lot Split, the owner shall record a deed restriction with the County Recorder and file the recorded deed restriction with the City, acknowledging the applicable use limitations that shall run with the land. The deed restriction shall include the following text:
1. The record owner shall reside in one of the dwelling units on either of the lots created by the Urban Lot Split as their primary residence for a minimum of three years from the date of approval of the Urban Lot Split. This requirement shall not apply to an applicant that is a “community land trust,” as defined in California Revenue and Taxation Code Section 402.1(a)(11)(C)(ii) or is a “qualified nonprofit corporation” as described in California Revenue and Taxation Code Section 214.15.
 2. Rental of units shall be of a term of more than 30 consecutive days or less are prohibited. Rental terms shall not allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant or related tenant.
 3. A maximum of two dwelling units shall be permitted on each lot, either as two primary units, or a primary unit and an Accessory Dwelling Unit, or a primary unit and a Junior Accessory Dwelling Unit; however, at no time shall an entitled Urban Lot Split exercise all provisions in Government Code Sections 65852.21, 66411.7, and 65852.2.

4. Any subsequent Urban Lot Split of land that was previously subdivided by an Urban Lot Split shall be prohibited.
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- J. This Chapter applies to proposed Urban Lot Split subdivisions on properties located within a single dwelling unit zone (R1-40, R1-14, R1-10, R1-10B, R1-5, R1-5B), except as prohibited per Section (I).
 - K. To ensure that no adverse unavoidable impacts occur to public health and safety, coastal resources or impede public access to coastal resources, proposed development in locations listed below shall not be eligible to utilize or benefit from this Chapter. Where such circumstances apply all existing discretionary review processing requirements, zoning requirements, and maximum density per the General Plan and certified Local Coastal Program shall apply where the:
 1. Proposed development is located on a lot that is either prime farmland or farmland of statewide importance, as defined pursuant to United States of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.
 2. Proposed development on lots containing wetlands or their buffers, as defined by the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993 or as revised), or other environmentally sensitive habitats as defined by Section 30.75.030, including those lands that have been conserved by dedication in fee title, easement covenants, or other forms of conservation easements.
 3. Proposed development that is located on a lot having habitat for protected species identified as either a candidate, sensitive, or species of special status by state or federal agencies, or otherwise fully protected species, or species protected by the Federal Endangered Species Act of 1973 (16 U.S.C Sec 1531 et seq. or as amended), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), which includes but is not limited to proposed development located on any one of the following Overlay zones:
 - a. Coastal Bluff Overlay Zone
 - b. Bluff, Slope, and Canyon Overlay Zone
 - c. Lagoon Overlay Zone

- d. Open Space Overlay Zone
 - f. Historic Preservation Overlay
4. Proposed development on a lot that falls entirely or partially within a mapped Special Flood Hazard Area identified on the 2019 FEMA Flood Insurance Rate Map or as revised (“FIRM”).
 5. Consistent with City codes, proposed development on a lot that falls entirely or partially within a mapped Very High Fire Hazard Severity Zone and does not have at least two emergency evacuation routes, an evacuation map specific to the parcel, or that cannot otherwise be mitigated to avoid loss of human life.
 6. Proposed development on a lot within a delineated earthquake fault zone as determined by the State Geologist in adopted maps published by the California State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
 7. Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.
 8. The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner’s rights under Chapter 12.75 (commencing with Government Code Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.
 9. Proposed development that would require demolition of an existing dwelling unit that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income; or a dwelling unit that has been occupied by a tenant in the last three years. An applicant must demonstrate whether an existing house on a property implementing an Urban Lot Split or altered to accommodate two dwelling units was owner occupied or rented by a tenant to the Director’s satisfaction, including but not limited to the execution of an affidavit that is subject to the laws of perjury.

10. Proposed development that requires the demolition of more than 25 percent of the existing exterior structural walls of a dwelling unit unless the existing unit has not been occupied by a tenant in the last three years from the date of application submittal.
11. Projects proposing an Urban Lot Split on a lot that contains an Accessory Dwelling Unit or Junior Accessory Dwelling Unit, unless the applicant converts one existing ADU or JADU per lot to a primary dwelling unit and removes all other ADUs or JrADUs in compliance with this Chapter. When proposing an Urban Lot Split, an applicant must choose whether to use the provisions of this Chapter or the provisions of the ADU and JADU regulations consistent with Government Code Section 65852.21 and Section 65852.2 but shall not use both. In either case, each resulting lot shall not contain more than two units and each proposed primary unit must be no more than 800 square feet in floor area.
12. On sites that have been established through prior entitlement of an Urban Lot Split; or when the owner of a parcel being subdivided and any person acting in concert with the owner, has previously subdivided an adjacent parcel using an Urban Lot Split as provided for in this Chapter.
13. Proposed development located within the North Beach District as identified in the Community Plan that due to flood hazards, limited public access to coastal resources, and impediments to public recreation.

24.66.060 - Grading Plan.

There shall be filed with an Urban Lot Split a grading plan showing any grading proposed for the creation of building sites within the subdivision or for construction of improvements to serve the subdivision. The grading plan together with the original topographical contours must be shown on the tentative map for an Urban Lot Split. This plan shall indicate approximate earthwork volumes of proposed excavation and filing operations. In the event no such grading is proposed, a statement to that effect shall be filed with the tentative map.

24.66.070 - Preliminary Title Report.

There shall be filed with the tentative map a current preliminary title report for the property being subdivided.

24.66.080 - Planning and Community Development Director – Duties.

The Planning and Community Development Director is authorized and directed to carry out the following duties concerning applications for Urban Lot Split under this chapter which include the following:

- A. Obtain the recommendations of other City departments, or other governmental agencies as may be deemed appropriate or reasonably necessary by the City Engineer in order to carry out the provision of this chapter; and
- B. Consider all recommendations and the results of all investigations and ministerially approve or disapprove the application.

24.66.090 - Consideration of Urban Lot Split Map – Notice of Decision.

Within 50 calendar days after a complete application for an Urban Lot Split Map is filed, the Director of Planning and Community Development shall ministerially approve or disapprove such map. The time limit specified in this section may be extended by mutual consent of the applicant and the city. If the Urban Lot Split is disapproved, the reasons therefore shall be stated in the notice of disapproval.

24.66.100 - Revised Urban Lot Split.

- A. Where an applicant proposes to revise or alter a submitted proposed Urban Lot Split application for which a tentative map has been previously approved by the Director of Planning and Community Development, the applicant may file with the Planning Department a revised Urban Lot Split application including the payment of established fees.
- B. A revised tentative map for an Urban Lot split shall conform to the following requirements:
 - 1. The proposed subdivision shown on such map shall generally conform to the street and lot pattern shown on the approved tentative map.
 - 2. The proposed subdivision shown on such map shall include only one contiguous area consisting of all or a portion of the subdivision shown on the approved tentative map together with such additional land, if any, as the subdivider desires to include.
 - 3. The revised tentative map shall contain all of the information required on previously approved tentative map and shall be accompanied by such data as is required to be filed with the proposed new tentative map.
 - 4. A revised tentative map shall be filed with the City within 24-months from the final approval of the previous tentative map. Extension of time must be requested by the applicant to the Director of Planning and Community Development prior to the expiration of the 24-month map revision timeframe. Extensions of time are at the sole discretion of the Director of Planning and Community Development.

5. Upon the filing of a revised tentative map and payment of the prescribed fees, such revised tentative map shall be treated in all respects as an original tentative map and shall be reported on, approved, conditionally approved, or disapproved, in the same manner as the previously approved tentative map, provided, however, that the applicant shall have 12 months from the approval or conditional approval of the original tentative map within which to obtain final map approval, unless such period is extended pursuant to this Chapter, in which case, the applicant shall obtain final map approval within the period of any such extension.

24.66.110 - Disapproval of Urban Lot Split.

The Director of Planning and Community Development shall not approve an Urban Lot Split under the following circumstances:

- A. Based on a preponderance of the evidence that the proposed subdivision would have a specific, adverse impact upon public health and safety, coastal resources, or the physical environment (including but not limited to sensitive coastal resources and public access) and where there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.
- B. The land proposed for subdivision is a lot or parcel which was part of an Urban Lot Split that the City previously approved.
- C. The subdivision proposes creation of more than two lots or more than two units per lot.
- D. If the Urban Lot Split does not meet the requirements of this Chapter or that all approvals or permits required by this Chapter for the project have not been issued.
- E. Failure to comply with applicable, objective requirements of the Subdivision Map Act and this Chapter.

24.66.120 - Expiration/Extension of Urban Lot Split.

The expiration of the Urban Lot Split shall be in accordance with Government Code Section 66452.6 or as revised and the following:

- A. A tentative map shall expire 24 months after its approval or conditional approval.
- B. Upon application received by the Planning Department at least 60 days prior to the expiration of the tentative map, the Director of Planning and Community Development, at their sole discretion, may extend the time of expiration for a period or periods not to exceed six years.

24.66.130 – Transmittal of Urban Lot Split to County Recorder.

Upon the approval of an Urban Lot Split by the Director of Planning and Community Development, the applicant or its agent shall transmit the map to the San Diego County Recorder’s Office and ensure the timely recording of the Tentative Map. An Urban Lot Split subject to Section 66493 of the Subdivision Map Act shall be processed in compliance with Government Code Section 66464(b).

24.66.140 – Severability.

Should a court of competent jurisdiction determine that these regulations are void or if certain terms or provision are voided, then those regulations shall either become void in their entirety or where the courts have determined that certain terms or provision are void by operation of the law then those terms and provisions shall have no force or effect.

The following is a reference to other DMMC Chapters that will be amended in association with the addition of the DMMC Chapters 30.93, 23.07, and 24.66 for SB-9 Implementation. Underline represents language to be added.

Chapter 30.75 (Coastal Development Permits)

30.75.080 – Coastal Development Permits Issued by the City—Issuing Authority, Public Hearing Required.

A. through D. [No change]

E. The Director of Planning and Community Development shall serve as the Issuing Authority to render a determination on applications for Coastal Development Permits for the following:

1. Projects which qualify for Administrative Design Review pursuant to the provisions of this Title.
2. Applications for Lot Line Adjustments and/or Certificates of Compliance.
3. An application for an Accessory Dwelling Unit in accordance with Subsection 30.91.030.D.5. that is not otherwise exempt from a Coastal Development Permit.
4. Development applications for by-right multiple dwelling units are to be in accordance with the Housing Element Implementation Overlay Zone pursuant to Chapter 30.92.
5. An application for an Urban Lot Split or construction of a Two Unit Residential Development in a single dwelling unit zone in accordance with Chapter 30.93 and Chapter 24.66.

F. [No change]

Chapter 30.10 (Very Low Density Residential (R1-40))

30.10.030 – Allowable Uses.

The allowable uses in the R1-40 Zone are:

- A. A single dwelling unit on each building site; and
- B. An Accessory Dwelling Unit that meets the requirements in Section 30.91.040, or a Junior Accessory Dwelling Unit that meets the requirements in Section 30.91.050.
- C. A Small Community Care Facility on each building site.
- D. Two Unit Residential Development pursuant to Chapter 30.93.

30.10.070 – Development Standards.

- A. [No change]
- B. Lot Dimensions.
 - 1. Minimum lot size: 40,000 square feet.
 - 2. Minimum street frontage: 20 feet.
 - 3. Minimum lot width: 75 feet.
 - 4. Minimum lot depth: 100 feet.
 - 5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66.
- C. [No change]

Chapter 30.11 (Modified Low Density Residential (R1-14))

30.11.030 – Allowable Uses.

The allowable uses in the R1-14 Zone are:

- A. A single dwelling unit on each building side; and
- B. An Accessory Dwelling Unit that meets the requirements in Section 30.91.040, or a Junior Accessory Dwelling Unit that meets the requirements in Section 30.91.050.

- C. A Small Community Care Facility on each building site.
- D. Two Unit Residential Development pursuant to Chapter 30.93.

30.11.070 – Development Standards.

- A. [No change]
- B. Lot Dimensions.
 - 1. Minimum lot size: 14,000 square feet.
 - 2. Minimum street frontage: 20 feet.
 - 3. Minimum lot width: 75 feet.
 - 4. Minimum lot depth: 100 feet.
 - 5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66
- C. [No change]

Chapter 30.12 (Low Density Residential (R1-10))

30.12.030 – Allowable Uses.

The allowable uses in the R1-10 Zone are:

- A. A single dwelling unit on each building side; and
- B. An Accessory Dwelling Unit that meets the requirements in Section 30.91.040, or a Junior Accessory Dwelling Unit that meets the requirements in Section 30.91.050.
- C. A Small Community Care Facility on each building site.
- D. Two Unit Residential Development pursuant to Chapter 30.93.

30.12.070 – Development Standards.

- A. [No change]

B. Lot Dimensions.

1. Minimum lot size: 10,000 square feet.
2. Minimum street frontage: 20 feet.
3. Minimum lot width: 75 feet.
4. Minimum lot depth: 100 feet.
5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66.

C. [No change]

Chapter 30.13 (Low Density Residential – Beach (R1-10B))

30.13.030 – Allowable Uses.

The allowable uses in the R1-10B Zone are:

- A. A single dwelling unit on each building side; and
- B. An Accessory Dwelling Unit that meets the requirements in Section 30.91.040, or a Junior Accessory Dwelling Unit that meets the requirements in Section 30.91.050.
- C. A Small Community Care Facility on each building site.
- D. Two Unit Residential Development pursuant to Chapter 30.93.

30.13.070 – Development Standards.

A. [No change]

B. Lot Dimensions.

1. Minimum lot size: 10,000 square feet.
2. Minimum street frontage: 20 feet.
3. Minimum lot width: 35 feet.
4. Minimum lot depth: 100 feet.

5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66.

C. [No change]

Chapter 30.14 (Medium Density Single-Family Residential (R1-5))

30.14.030 – Allowable Uses.

The allowable uses in the R1-5 Zone are:

- A. A single dwelling unit on each building site.
- B. An Accessory Dwelling Unit that meets the requirements in Section 30.91.040, or a Junior Accessory Dwelling Unit that meets the requirements in Section 30.91.050.
- C. A Small Community Care Facility on each building site.
- D. Two Unit Residential Development pursuant to Chapter 30.93.

30.14.070 – Development Standards.

A. [No change]

B. Lot Dimensions.

1. Minimum lot size: 5,000 square feet.
2. Minimum street frontage: 20 feet.
3. Minimum lot width: 50 feet.
4. Minimum lot depth: 90 feet.
5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66.

C. [No change]

Chapter 30.15 (Medium Density Single-Family Residential – Beach (R1-5B))

30.15.030 – Allowable Uses.

The allowable uses in the R1-5B Zone are:

- A. A single dwelling unit on each building site.
- B. An Accessory Dwelling Unit that meets the requirements in Section 30.91.040, or a Junior Accessory Dwelling Unit that meets the requirements in Section 30.91.050.
- C. A Small Community Care Facility on each building site.
- D. Two Unit Residential Development pursuant to Chapter 30.93.

30.15.070 – Development Standards.

- A. [No change]
- B. Lot Dimensions.
 - 1. Minimum lot size: 5,000 square feet.
 - 2. Minimum street frontage: 20 feet.
 - 3. Minimum lot width: 50 feet.
 - 4. Minimum lot depth: 80 feet.
 - 5. New lots created as part of an Urban Lot Split as defined in Chapter 30.93 must be in compliance with the lot size and lot width requirements pursuant to Chapter 24.66.
- C. [No change]

(New DMMC) 23.07 - Objective Design Standards for Residential Development.

23.07.010 – Purpose

- A. In response to a declared housing crisis, the State of California established various mandates in State Housing law that require streamlining of permit applications through an administrative process at the city level, including limitations that require objective design standards for certain types of housing development.
- B. The purpose of this Chapter is to set forth the City’s objective design standards where the City is precluded by State law from applying discretionary design review and other permit approval processes identified in Chapter 23.08.

- C. The intent of this Chapter is to facilitate the permitting process for proposed housing development consistent with State law and to implement the City's Community Plan (General Plan) in a manner that harmonizes adopted local policies with State law.

23.07.020 – Applicability and Process for Approval

- A. All residential development referred to in this Chapter shall be processed in accordance with a ministerial permit approval process and reviewed without discretionary review or public hearings.
- B. Chapter 23.07 shall apply to proposed multiple dwelling unit housing development within the Housing Element Implementation Overlay Zone (Chapter 30.92) and any proposed residential development where the City is precluded by State law from applying discretionary design review and permit approval processes that are identified in Chapter 23.08.
- C. Chapter 23.07 shall also apply to residential development in single dwelling unit zones that are subject to California Government Code Sections 65852.21 and 66411.7, referred to in this Chapter as "Two Unit Residential Development." As part of the ministerial review, any Two Unit Residential Development shall comply with the following Objective Design Standards listed in Table A below. For any standard not explicitly identified below, all applicable objective standards of the underlying zoning designation and other objective standards contained in Chapter 30.93 shall apply. Where there is conflicting requirements between the Objective Design Standards below and other requirements within the Del Mar Municipal Code (DMMC), the stricter objective standard shall apply.
- D. Chapter 23.07 shall not apply to proposed Accessory Dwelling Units, which are subject to review and processing in accordance with Chapter 30.91.

23.07.030 – Objective Design Standards for Two Unit Residential Development

- A. If it is not feasible to comply with all applicable Objective Design Standards listed in Table "A" below when constructing up to two, 800-square-foot dwelling units on a property, the applicant shall provide all necessary information requested by the City to reasonably demonstrate that it is infeasible to construct two, 800-square-foot dwelling units if compelled to comply with the City's Objective Design Standards. Upon review of the applicant's completed feasibility study, the Director of Planning and Community Development shall determine which of, if any, Objective Design Standards will apply or what standards may be waived to allow for up to two dwelling units that are no more than 800 square feet. The City will also evaluate the application compliance with the California Coastal Act of 1976 and determine if other feasible siting locations reduce impacts environmentally sensitive coastal areas. Additionally, the project may be denied if it will endanger public health or safety or create an unmitigable adverse impacts to the physical environment. At which time the City will produce written findings to the applicant based on the preponderance of evidence that the project will have unavoidable impacts to the public's health and safety, coastal resources, or the physical environment.

- B. An exterior wall heater and/or air conditioning unit is permitted for a dwelling unit proposed under this Section. Any additional mechanical equipment or exterior building features that are not otherwise required by this Section, Chapter 30.93, or the California Building Code shall be subject to Administrative Design Review in accordance with Section 23.08.035.
- C. To remove, destroy, or move a Protected Tree as defined in Section 23.50.020 to accommodate the construction for a Two Unit Residential Development project shall be subject to the requirements contained in Chapter 23.50.

TABLE A

SB 9 – OBJECTIVE STANDARDS FOR RESIDENTIAL DEVELOPMENT

A. Window Placement	<p>1. Windows shall be located so that sight lines maximize privacy and avoid direct views into neighboring homes. The following shall be employed:</p> <ul style="list-style-type: none"> a) Sizing and placing of windows shall be offset or stagger the window placement from neighboring windows. b) When staggering or offset of windows cannot be achieved, obscured or opaque window glass, clerestory windows, or windows with higher sills shall be used.
B. Neighborhood Compatibility & Setbacks	<p>1. Front setbacks of new homes shall relate to those on adjacent parcels. In cases where setbacks along a street front are uniform, new development shall match those setbacks unless this standard would preclude the construction of a unit size of less than 800 square feet, and in this case, shall conform to the required minimum front and side setback.</p> <p>2. When adjacent lots have nonconforming front yard setbacks, the new development shall conform to the required minimum front yard setback.</p> <p>3. When front yard setbacks are varied in the neighborhood, new homes shall be made to locate the new home with an average setback of the two existing adjacent homes, unless this standard would preclude the construction of a unit size of less than 800 square feet, and in such case, shall conform to the required minimum front setback. No setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.</p>

	<p>4. Outdoor speakers, televisions or other permanent electronic entertainment features with a mechanically or electronic generated noise are prohibited.</p> <p>5. Exterior HVAC or other mechanical equipment shall be fully screened from view from a public right-of-way or adjacent property and located in a manner that would achieve compliance with the maximum allowed decibel levels of Chapter 9.20 – Noise Regulations.</p> <p>6. HVAC units and other mechanical equipment shall be ground-mounted only. HVAC units and associated screening equipment shall be a minimum of four feet from a side or rear property line. Encroachment of a HVAC or mechanical equipment within a front yard or street side yard setback area is prohibited.</p> <p>7. Rooftop decks and balconies are prohibited.</p> <p>8. Attached fireplaces and chimneys shall not project into any required yard setback area. A chimney shall be limited to the minimum height necessary to comply with the California Building Code.</p> <p>9. No part of the dwelling unit, including eaves, cantilevered portions of a dwelling unit, or overhangs shall encroach into a four-foot side and rear setback.</p>
<p>C. Public Safety and Environmental Protection- Hillside Development & Grading</p>	<p>1. To protect coastal resources and reduce wildfire impacts, homes shall not be located at the crest, ridgeline, or the top of a hill. Homes shall not project above the peak of the ridgeline.</p> <p>2. To protect public health and safety, when feasible, utilize a 20-foot setback from the top of slope and a 10-foot setback from the bottom of a substantially steep slope, which are slopes that exceed 25 percent grade (see DMMC Chapter 30.52) for the design and placement of homes to maintain the natural topography and minimize grading.</p> <p>3. Excavation or grading onto a 4:1 slope shall be prohibited.</p> <p>4. Grading shall be limited to the area required for the structure. Any grading outside of the structure shall be subject to the requirements and procedures contained within Chapter 23.33 – Land Conservation Permit.</p>
<p>D. Retaining Walls and Fencing</p>	<p>1. All objective standards for fences contained within Section 30.86.090 – Fences/Retaining Walls apply.</p> <p>2. Retaining walls outside of the building footprint shall be at least four feet from a building wall and shall be fully landscaped and/or provide for a walkway adjacent to the home.</p>

	<p>3. The distance between two terraced retaining walls shall be, at the minimum, the average of the height of the two walls. Retaining walls shall not exceed four feet in height. The horizontal area between two retaining walls shall be vegetated.</p> <p>4. Retaining walls, block walls, and planters shall be designed with stone, native, or natural appearing materials such as, but not limited to, split face or stone veneer and shall not be unfinished concrete masonry units (CMU) block.</p> <p>5. Fences and walls shall follow the natural site topography.</p> <p>6. Retaining walls shall be earth tone colors that match the surrounding natural hues of the hillsides. Use of colors that contrast with the surrounding natural terrain such as white are prohibited. Earth tone is defined as a color scheme that draws from a color palette of browns, tans, warm grays, and greens. The colors in an earth tone scheme are muted and flat in an emulation of the natural colors found in dirt, moss, trees, and rocks.</p> <p>7. Any perimeter fencing on hillside properties shall be visually open with the use of split rail, picket post, or cable.</p> <p>8. Chain-link fencing is prohibited unless it can be fully screened from view with landscaping or is not visible from the public right-of-way or adjacent properties. If chain-link is proposed, it shall be vinyl coated in black or other dark color that matches the natural terrain.</p>
<p>E. Hardscape & Access to Public Right-Of-Ways</p>	<p>1. Access to parking areas shall have one unobstructed, permanently surfaced driveway not less than 10 feet in width. Said driveway width shall not exceed a total maximum of 20 feet along all abutting street lines.</p> <p>2. Hardscape shall not exceed 50 percent of the front yard and street side setback, including driveways and pedestrian walkways.</p> <p>3. Line of sight shall be retained in accordance with Engineering standards. No wall, structure, plant material, or other object that exceeds 42 inches shall be erected or placed within a triangular area formed by measuring 10 feet from an intersecting driveway, street, or alley in a manner as to obstruct or impede vision for automobiles.</p> <p>4. Existing vehicular access and curb cuts shall remain in the existing locations and may be redesigned only if this standard would preclude the construction of a unit less than 800 square feet.</p> <p>5. Unenclosed, on-site parking shall be located outside of a required side, street side yard and front yard setback.</p>

	<p>6. Circular driveways are prohibited.</p>
<p>F. Water Resource Protection-Landscape and Vegetation</p>	<p>1. New construction shall not be located within the dripline of an environmentally “Protected Tree” as defined in Chapter 23.50.</p> <p>2. Trees shall not be planted in a columnar manner. New trees shall be a minimum 24-inch box size and new shrubs shall be a minimum 5-gallon size.</p> <p>3. All landscaping shall be drought tolerant and California native plants.</p> <p>4. All proposed landscaping shall comply with Chapter 23.60 - Water Efficiency Landscape Ordinance (WELO).</p>
<p>G. Architectural Features and Articulation</p>	<p>1. Four-sided (360-degree) architecture shall be incorporated on all building elevations, which include, but are not limited to, variation in massing, roof forms, wall planes, materials, and surface articulation. Material and color changes shall occur at intersecting planes and shall not occur at the outside corners of structures.</p> <p>2. Units shall have an identifiable main entry when approached from the street. Garage doors shall not be the main entry feature. Sliding, retractable, or accordion style doors shall not be used for the main entry of a home.</p> <p>3. Exterior materials shall be siding, stucco, brick, stone, or other similar materials and shall be in an earth tone color. Board-formed, non-colored, concrete, and stained wood with proper fire assemblies may be used for accent walls.</p> <p>4. The maximum allowed enclosed or partially enclosed non-converted garage space shall be limited to 10 feet wide by 20 feet long.</p> <p>5. If an attached garage is proposed, the garage shall be setback five feet from the façade of the proposed dwelling unit.</p> <p>6. Garage doors shall be recessed a minimum of two inches from the face of the garage.</p> <p>7. Wall and roof planes on each elevation must be varied at a minimum of every 20 feet with a projection, offset or recess of the building of at least one foot in depth.</p> <p>8. Dwelling units shall be one-story and a maximum 16 feet in height. Dwelling units shall have a maximum 10-foot plate height.</p>

	<p>9. Sloped roof materials shall be 30-year minimum composition shingle, tile, natural slate or standing seam metal in a non-reflective color. Flat roofs shall utilize non-reflective materials and colors.</p> <p>10. All vents, downspouts, flashing, and electrical conduit shall match the color of the dwelling.</p> <p>11. Development that requires the demolition of an existing dwelling unit shall be limited to 50 percent demolition of the existing exterior structural walls for dwelling units not occupied by a tenant in the last three years.</p>
<p>H. Lighting and Screening</p>	<p>1. All exterior lighting shall be fully shielded with shut off controls or sensors, timers, or motion detectors. Shielded up lighting and fixtures with an adjustable aiming angle are prohibited.</p> <p>2. Exterior building lighting shall be limited to the minimum necessary for compliance with Building Code requirements.</p> <p>3. All exterior lighting proposed, including fixtures and sources shall be certified Dark Sky Friendly by the Fixture Seal of Approval program of the International Dark-sky Association, or be comparable in terms of fixtures that minimize glare, reduce light trespass, and do not pollute the night sky.</p> <p>4. Glass walls (any wall plane consisting of more that 75 percent opaque or transparent glazed surface) that are visible from neighboring homes are prohibited.</p> <p>5. The lamp color or color temperature for all lighting shall be limited to a maximum 2,700 kelvin.</p>
<p>I. Screening</p>	<p>1. Roof penetrations such as stacks, vents, and other roof-mounted equipment shall be located away from view from the public right-of-way. All flashing, sheet metal, vents, and pipe stacks shall be painted to match the adjacent roof or wall material.</p> <p>2. Areas for trash containers shall be incorporated into the building design and located within a garage or fully screened from the public view with walls and landscaping and a lid if the top of the trash bins is not fully covered by the walls. Trash container storage shall be located at the rear or the interior side yard of a property if not located within a garage.</p> <p>3. Foundations and undersides of structures shall be fully screened with compatible materials and colors of the home.</p> <p>4. Mechanical equipment such as backflow preventers shall be screened from public view if located in the front or street side yard setback.</p>


	<p>5. All ground mounted mechanical equipment shall be completely shielded to eliminate noise and screened from view by adjacent properties by use of a wall, view-obscuring fencing and/or landscaping, or enclosed within a building. Screening walls shall be designed to be architecturally consistent with the building design and materials.</p>
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SB 9 Eligible Properties

- SB 9 Eligible Lot
- SB 9 Eligible because within Wildland Urban Interface with at least two evacuation routes


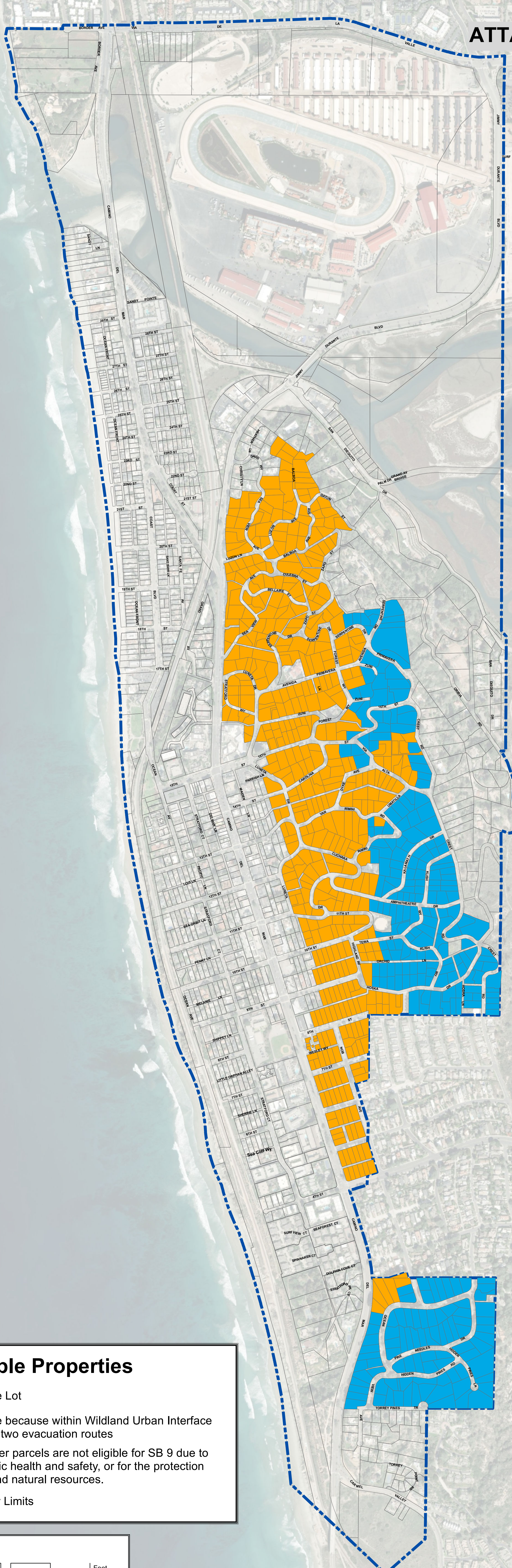
Note: All other parcels are not eligible for SB 9 due to zoning, public health and safety, or for the protection of coastal and natural resources.

- Del Mar City Limits



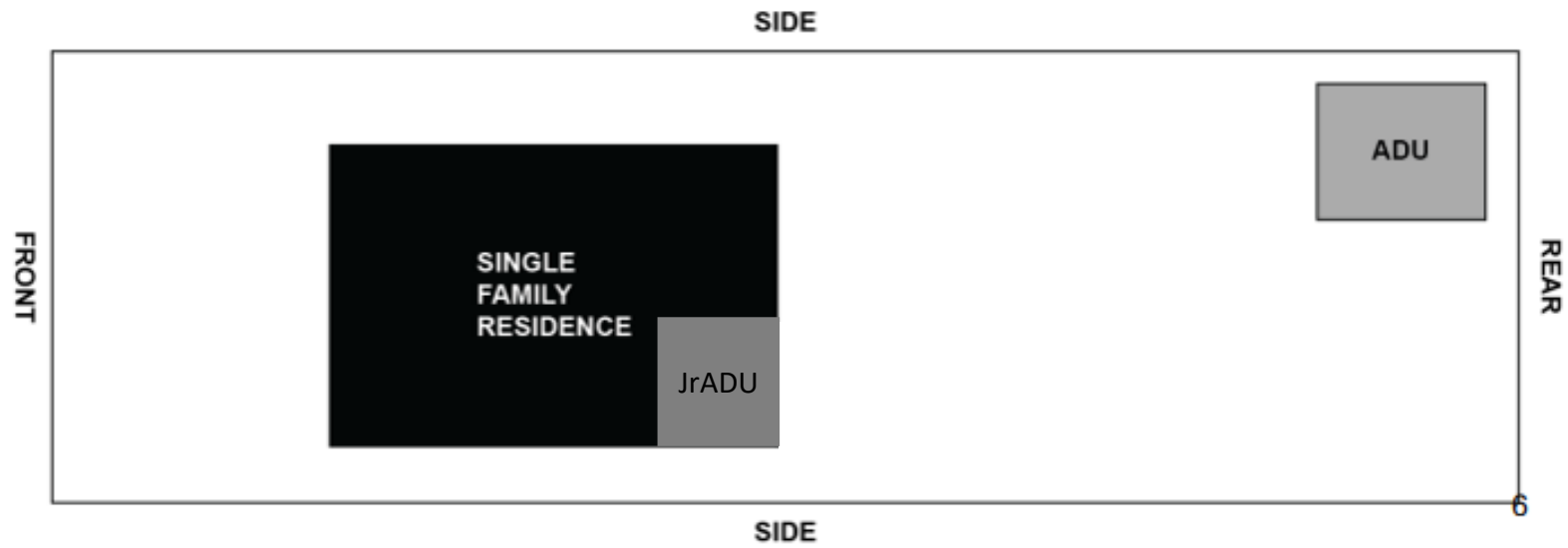
0 400 800 1,200 Feet

March 28, 2023

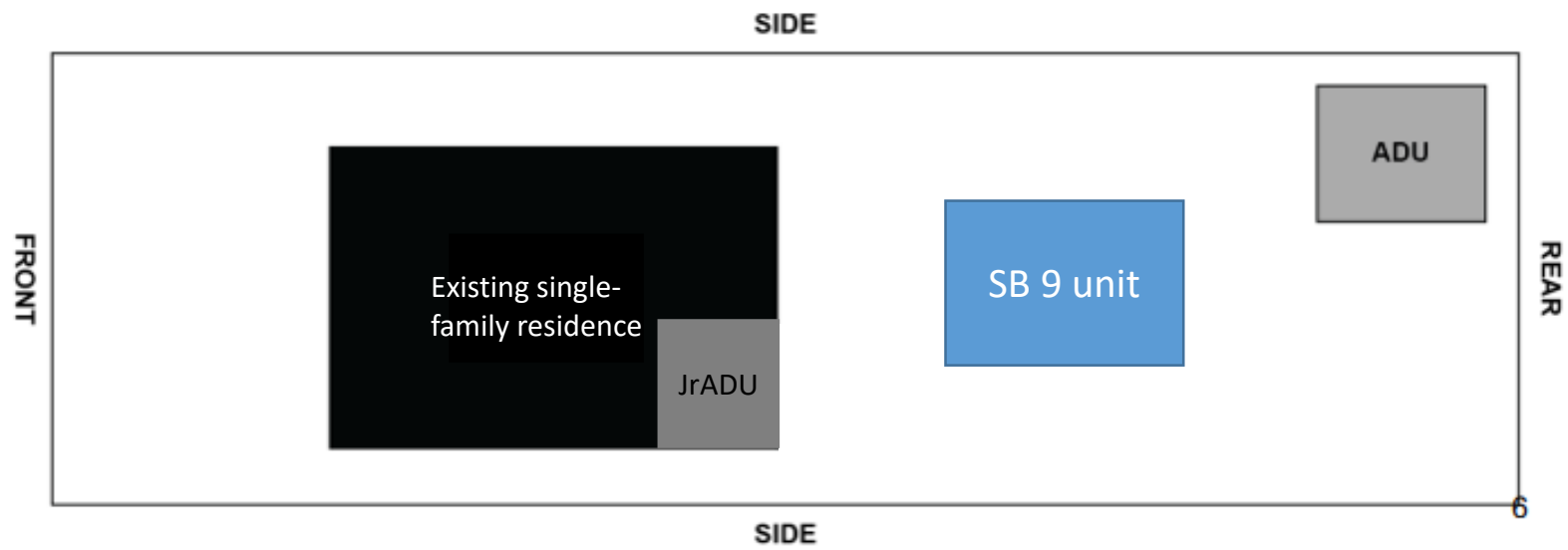



ATTACHMENT D

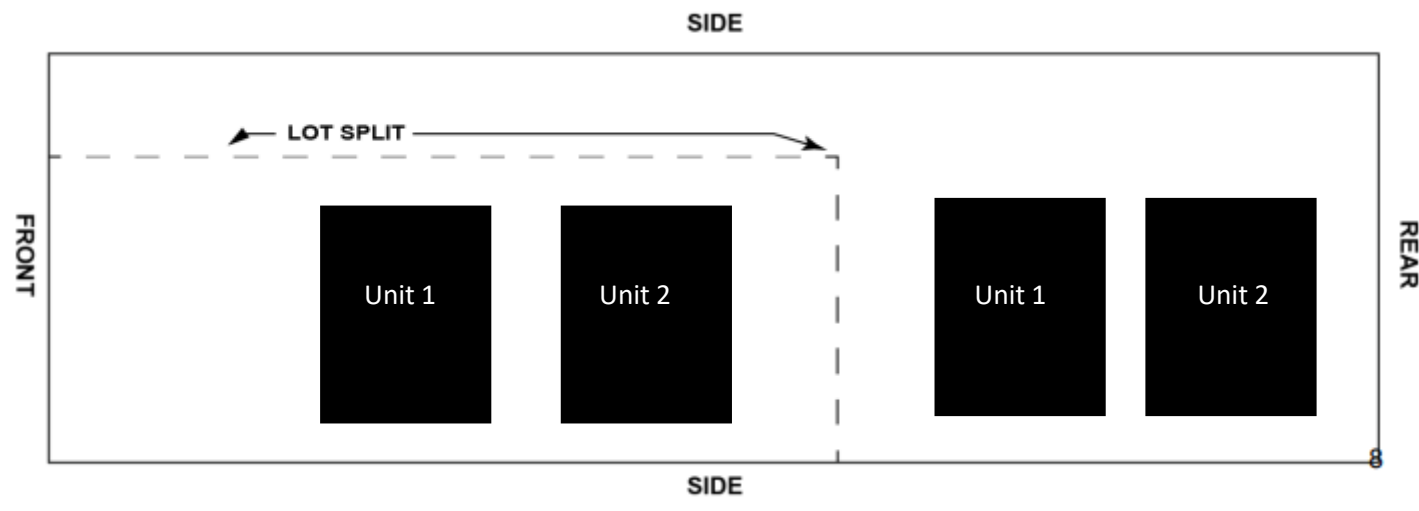
Existing Regulations: up to 3 units



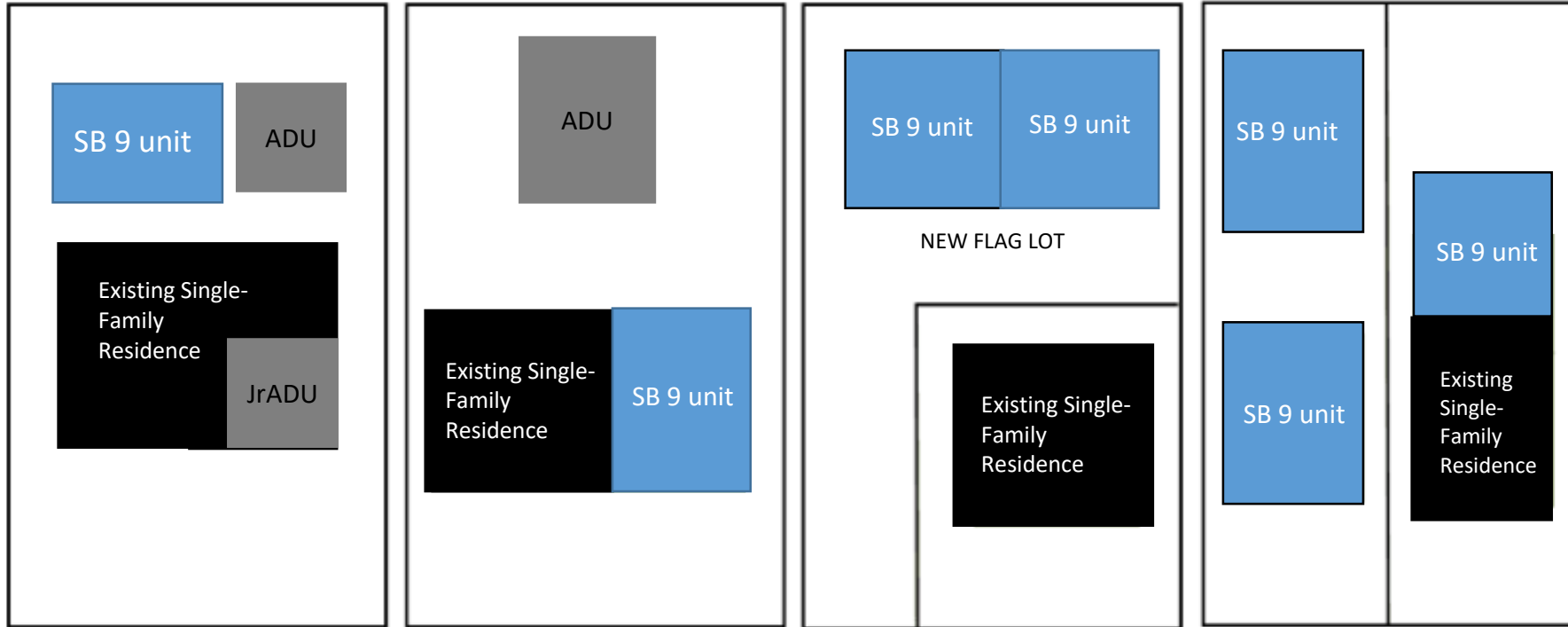
SB 9 without Lot Split: up to 4 units



Urban Lot Split: Maximum two units on each resulting lot (ADUs not permitted with Urban Lot Split)



POSSIBLE LOT CONFIGURATIONS



Public Street

NO LOT SPLIT

One existing dwelling unit with a JrADU, one detached SB9 unit, and one detached ADU.

Public Street

NO LOT SPLIT:

One SB 9 unit attached to the existing dwelling and one detached ADU.

Public Street

URBAN LOT SPLIT:

New flag lot created with two SB9 units. One existing residence remains on the second lot.

Public Street

URBAN LOT SPLIT:

Two equally sized and shaped lots. The lot on the left has two SB 9 units. The lot on the right retains an existing dwelling and adds an SB 9 unit.

Jessica Evans

From: Planning Mail Box
Sent: Tuesday, April 18, 2023 3:05 PM
To: Jessica Evans
Subject: FW: support for SB9 suggestion

From: Camilla Rang <camillarang@yahoo.com>
Sent: Tuesday, April 18, 2023 3:04 PM
To: Planning Mail Box <Planning@delmar.ca.us>
Subject: support for SB9 suggestion

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Planning commission,

I read about the suggestion you will lay out to City Council in May to prohibit ADU construction on an already SB9 split lot. I think that's brilliant and something most people (except developers) will agree with.

Citation from City site <https://www.delmar.ca.us/867/Senate-Bill-9-Development>
"Furthermore, if the City adopts an ordinance, staff is proposing the City Council consider prohibiting ADU construction when an owner chooses to develop under SB 9 Urban Lot Split regulations."

Thank you for all your hard work.

Sincerely,

Camilla Rang
159 10th Street, Del Mar, CA 92014

Jessica Evans

From: Ron Prater <ron@op-design.com>
Sent: Wednesday, April 19, 2023 10:49 AM
To: Jessica Evans
Cc: Arlene Prater
Subject: SB 9 Implementation ordinance

Follow Up Flag: Follow up
Flag Status: Flagged

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Dear Ms. Evans,

I would like to state my support of the limitations on development of lot splits under SB 9 outlined in 30.93.030 of the draft implementing ordinance. If the goal of SB 9 is to increase affordability of housing, then the implementing ordinance should strive to avoid conversion of one expensive housing unit into two expensive ones. The proposed ordinance limits the floor area of the structures developed under this bill to 800 square feet with basements unallowed and height limit of 16'. These specifications will go a long way to ensuring that the housing units developed under SB 9 will actually be affordable.

-Ron Prater
442 Zuni Drive
Del Mar

Jessica Evans

From: Warren Spieker <SpiekerW@continuinglife.com>
Sent: Monday, April 24, 2023 5:02 AM
To: Jessica Evans
Subject: Red dot for SB 9 City Council topic

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jessica-

Please encourage our city council members to institute some guardrails around SB 9 so we do not find Del Mar with density that our infrastructure is unable to meet.

State-guaranteed ADUs may allegedly meet the needs for low-income housing or a senior family member. However, lot splits coupled with ADUs quickly will turn Del Mar's density into multifamily housing. Del Mar's infrastructure was not designed to meet the density associated with the ability to create a duplex or subdivide a property into multiple lots. Please do not create incentives to allow for multifamily housing in what was designed to be single-family neighborhoods. This will only incentivize home sellers, or the descendants of original home owners, to sell to multifamily developers.

Thank you.

Warren Spieker
Continuing Life LLC
1940 Levante Street
Carlsbad, CA 92009
(760) 704-6260 Work
(858) 232-9949 Cell

Where Residents & Employees Thrive

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Matt Bator

From: Arlene Lighthall <alight23@gmail.com>
Sent: Saturday, April 29, 2023 11:39 AM
To: Jessica Evans
Subject: SB 9

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I urge the Design Review Board and the City Council to do all possible to maintain our Community Plan with one dwelling per R-1 lot. If possible, set standards for ADU's for compliance with the Community Plan and to help meet our quota for low-rental housing by requiring low-rental of the additional dwelling on the R-1 property.

Arlene Lighthall
429 Luzon Ave.
Del Mar, CA 92014
(858) 755 2878
alight23@gmail.com

Matt Bator

Subject: FW: SB9

From: deftos <mdeftos@gmail.com>
Sent: Monday, May 1, 2023 3:22 PM
To: Jessica Evans <jevans@delmar.ca.us>
Subject: Re: SB9

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Jessica,

I have additional input into the draft ordinance. This time regarding rear and side yard setback requirements.

SB 9 states:

Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section (Gov. Code § 65852.21 (b)(1).

The referenced paragraph (2) states (in part):

A local agency may require a setback of up to four feet from the side and rear lot lines (Gov. Code § 65852.21 (b)(2)(B)(ii))

In apparent conflict with this, the Del Mar draft ordinance states:

“New dwelling unit structures must comply with the setbacks of the base zone and DMMC Section 30.86.200 (I), unless a reduced setback is needed to build a dwelling unit with a maximum gross bulk floor area of 800 square feet to reach the maximum density for the lot. Setback reductions shall not be permitted closer than four feet from interior side and rear property lines.”

This clause of the Del Mar draft ordinance conflicts with the plain text of SB 9 which only allows the City to require rear and side setbacks of “up to four feet.” The maximum rear and side setbacks a city can require is not limited to circumstances where such (smaller) setbacks are necessary to build 800 sq ft dwelling units. That limitation only applies to the objective zoning, subdivision and design standards imposed by the city. SB 9 clearly prohibits these standards from requiring greater than 4-foot rear or side setbacks (“except as provided in paragraph (2)”).

Other cities appear to have recognized that they cannot require greater than 4 foot side and rear setbacks. The Solana Beach SB 9 implementation states, “a minimum setback of four feet, or the applicable setback for the zone district, whichever is less, is required for the rear and side property lines.”

Some cities have given incentives for larger setbacks, such as allowing larger dwelling units when existing base zone setbacks are honored. For example, Corte Madera allows SB 9 dwellings of up to 1,200 square feet if the applicant conforms to the setbacks in the zoning. Otherwise they’re limited to 800 square feet.

Perhaps Del Mar could consider such an approach to incentivize property owners to honor the larger base zone setbacks.

Thanks for your consideration
Michael Deftos

Matt Bator

Subject: FW: SB9

From: deftos <mdeftos@gmail.com>
Sent: Monday, May 1, 2023 4:24 PM
To: Matt Bator <MBator@delmar.ca.us>
Subject: Re: SB9

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thanks,

Please also include the following regarding the exemption of certain overlay zones from SB 9 development

Del Mar Planning Department and Commission,

Thank you for the opportunity to provide input into the draft ordinance for implementing SB 9 in Del Mar. While the draft ordinance has many merits, I believe the City cannot categorically exempt certain overlay zones from SB 9 development, as explained below.

Sections 30.93.030 (B)(3) and 24.66.050 (I)(3) of the draft ordinance categorically exempt the following overlay zones from SB 9 development: Coastal Bluff Overlay Zone; Beach Overlay Zone; Bluff, Slope and Canyon Overlay Zone; and Lagoon Zone. Various justifications have been given by the City for this exemption: for protection of “habitat for protected species,” for protection of “coastal and natural resources,” and/or for protection of “public health and safety.” I believe the City does not have authority to categorically exempt these overlay zones from SB 9 development. SB 9 exempts certain designated areas such as wetlands, earthquake fault zones, hazardous waste sites, agricultural land, designated historic districts and FEMA-designated flood plains. It also exempts parcels in high fire hazard severity zones unless fire hazard mitigation measures are adopted. For all other parcels, any denial of an SB 9 project must be made on a case-by-case basis. Per the Attorney General, “Any exemption from SB 9 for development requires examination of the attributes of the individual parcel. (Gov. Code §§ 65852.21 (a)(2), 66411.7 (a)(3)(C)).”^[1] Such an exemption must be based on a written finding based on preponderance of the evidence that the project would have a specific, adverse impact on public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The specific, adverse impact must be based on specific, objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. (Gov. Code §§ 65852.21(d); 66411.7(d)).

Regarding the justifications for excluding these overlay zones provided by the City:

Habitat for protected species:

The California Attorney General has stated that a developed parcel cannot be considered habitat for a protected species: “Land that is *already* developed with, for example a single-family home is not, by definition, habitat.”^[1] Moreover, the Planning Department does not appear to have identified any species that qualifies as a “protected species” as defined by SB 9^[2] for which these zones (and only these zones) serve as habitat. If such species were identified, the City would still be required to determine that an individual parcel was a habitat for this species. Per the Attorney General, “if a proposed housing development or a lot split under SB 9 is on a parcel that is indeed a habitat for

a protected species, however unlikely that may be, a local agency can support that determination with substantial evidence.”^[1] The City cannot categorically exclude certain overlay zones from SB 9 development based on an unsubstantiated claim that all of the parcels in these zones serve as habitat for protected species.

Protection of coastal and natural resources:

The text of SB 9 does not mention “protection of coastal and natural resources.” It only states that SB 9 development may not violate the Coastal Act (Gov. Code § 65852.21 (k)). Most or all parcels in the overlay zones that are proposed to be exempt from SB 9 in the draft ordinance are parcels that have already been developed. Further development of these parcels under SB 9 cannot be considered categorically to violate the Coastal Act. Even if SB 9 could be construed to allow “protection of coastal and natural resources” as a valid criterion for excluding SB 9 development, it still holds that “any exemption under SB 9 requires examination of the attributes of the individual parcel.” A determination supported by substantial evidence that a proposed project would violate the Coastal Act would have to be made on a case-by-case basis. The City cannot categorically exclude certain overlay zones from SB 9 development based on an unsubstantiated claim that any further development in any of the parcels in these zones would adversely impact coastal and natural resources or violate the Coastal Act.

Adverse impact on public health and safety or the physical environment:

SB 9 has specific instructions regarding the denial of a proposed project based on a finding that the project will have a specific, adverse impact upon “public health and safety or the physical environment.” (Gov. Code §§ 65852.21(d) and 66411.7(d)). The City must make a “written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.” Paragraph (2) of subdivision (d) of Section 65589.5 defines a “specific, adverse impact” as a “significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” Such a finding cannot be made for a specific parcel before a specific project is proposed. The City cannot categorically exclude certain overlay zones from SB 9 development based on an unsubstantiated claim that any further development in any of the parcels in these zones would have a specific, adverse impact upon public health and safety or the physical environment.

Summary:

Despite any merits of doing so, I believe the City cannot categorically exclude the Coastal Bluff Overlay Zone; Beach Overlay Zone; Bluff, Slope and Canyon Overlay Zone; and Lagoon Zone from SB 9 development. Instead, it must evaluate proposed SB9 projects in these zone on a case-by-case basis for compliance with SB 9 and the Coastal Act

Thanks for your consideration,
Michael Deftos

^[1] <https://oag.ca.gov/system/files/attachments/press-docs/AG%20Letter%20to%20Woodside%20re%20SB%209.pdf>

^[2] “identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).” (65852.21(a) and 65913.4(a)(6)(J))

Matt Bator

From: Rich Jamison <srrichdm@gmail.com>
Sent: Wednesday, May 3, 2023 3:24 PM
To: Matt Bator
Subject: Item 1 - May 9, 2023 Planning Commission Agenda
Attachments: Two-Unit Residential Development.pdf; ordinance_1671.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

May 3, 2023

To: Planning Commission, City of Del Mar

Chair Posner and Planning Commission Members:

Del Mar's draft SB 9 ordinance could be significantly enhanced by incorporating some of the regulations included in the SB 9 ordinances of two other California cities—Santa Barbara and Laguna Beach. These regulations address important factors that are not covered in the draft Del Mar ordinance and proposed Objective Guidelines.

The following are selected regulations of the Two-Unit Residential Housing/Urban Lot Split (SB 9) ordinances for the cities of Santa Barbara ("SB") and Laguna Beach ("LB") that I believe should be considered for inclusion in the Del Mar SB 9 ordinance and Objective Guidelines. The recommended regulations cover a variety of relevant subjects, including affordability, compatible design, lot coverage and frontage, grading, and parking.

Affordability

SB - A unit in the Coastal Zone will be limited for sale or rent at levels affordable to low-income households.

Clearly, Santa Barbara is attempting to address the primary intent of the State policy by requiring SB 9 projects to be affordable. They also have affordability requirements for projects outside the Coastal Zone but they are not as strict. Is there any reason Del Mar can't incorporate this requirement into its ordinance?

Compatible Design

LB - Exterior design, including materials, finishes, colors and landscape shall be compatible with existing buildings on the site (if any exist), and if two units are proposed, they shall be compatible with one another.

SB - On a site already developed with an existing residential unit, the new unit shall be designed and constructed to match the existing paint color and exterior building materials, including but not limited to siding, windows, doors, roofing, light fixtures, hardware and railings. If residential development is proposed on a lot where no residential units currently exist, the units shall be constructed using the same architectural style, exterior building materials, colors, and finishes.

Both Laguna Beach and Santa Barbara ordinances require design compatibility between existing and proposed buildings—for SB 9 and ADU ordinances. There are examples in Del Mar of ADU's that are not compatible with the primary structure, which is especially problematic when ADU's are in front of the primary structure. Why couldn't this requirement be included in Del Mar's ADU ordinance as well as its SB 9 ordinance?

Lot Coverage

LB - The building lot coverage limitation shall include all structures, including the main residence, any SB 9 housing development, any accessory dwelling unit, garages, etc. The totality of the structure(s) on the lot shall not exceed the allowable building lot coverage specified in the zone in which the SB 9 housing development is proposed.

SB 9 projects should not be allowed to exceed existing lot coverage requirements to the extent that such projects are incompatible with existing development in Del Mar. This seems like a desirable and reasonable restriction that Del Mar should consider.

Maximum Floor Area

SB - Total floor area may not exceed 85% of maximum FAR.

Del Mar's draft ordinance has no FAR restriction. It would be helpful to know how many of the SB-9 eligible lots, including nonconforming R1-10 lots, would enjoy a significant FAR increase above existing zoning per the City's proposed policy.

Setbacks

LB - Whenever a side yard or rear yard abuts a street, a minimum setback of 10 feet shall be required on the street side yard and the setback for the zone shall apply to the rear street-side lot line.

There are examples in Del Mar of ADU's that have been built with a four-foot setback from a public street. The proposed Del Mar ordinance preserves the underlying street-side setback in the zone but a through lot (that fronts two streets) can have a rear yard that allows a four-foot setback from a public street. These substandard setbacks really degrade neighborhood aesthetics. It is also a fair assumption that they negatively affect property values for neighbors. In Santa Barbara, all yards that front public streets are considered front yards (primary and secondary), so there are no substandard frontage setback issues, unless possibly there is no alternative location to build.

Minimum Lot Size

SB - 2 x minimum lot size per zone

Santa Barbara's minimum lot size within the Coastal Zone is more restrictive than the minimum lot size proposed in Del Mar's draft ordinance.

Lot Frontage

LB - The street-facing parcel of an SB 9 urban lot split shall contain a minimum of 30 feet of street frontage, with direct and compliant vehicle access to the public right-of-way. The Community Development Director may authorize shorter street frontages when adequate vehicle access to both lots is demonstrated. Both newly created SB 9 parcels shall be no less than 1,200 square feet with no zig-zag lot lines and no flag lots. The Community Development Director may waive these lot-line standards when deemed technically necessary.

SB - No flag lots, street frontage per zone.

From any design perspective, flag lots are clearly not desirable. The attached Santa Barbara SB-9 Supplemental Application has some useful lot diagrams titled "What are my options for Urban Lot Split?"

Grading

SB - No more than 250 cubic yards of grading (i.e., cut and/or fill under the building footprint and outside the building footprint to accommodate the new unit) is allowed.

In my opinion, including a grading regulation like this in Del Mar's ordinance is essential— especially considering that all the SB-9 eligible lots are east of Camino Del Mar on the hill and will lack the usual discretionary review. Grading is relatively cheap and it is easy to imagine developers feeling empowered to propose excessive landform modification to maximize views and pad sizes (and sales prices). We should not unduly burden the staff and the DRB by making them administer aggressive Land Conservation Permit applications for SB-9 projects. Rather, we should follow Santa Barbara's lead and limit grading to 250 cubic yards. There is a hillside ADU project in Del Mar that required more than 400 cubic yards of grading, most of which required exporting off-site (to the consternation of neighbors). The grading could have been minimized but it would have resulted in a less marketable ADU. Six Torrey Pine trees were recently removed in the vicinity so now this impactful ADU project is visible from a heavily-traveled public street.

Parking

SB - Two covered or uncovered parking spaces are required per unit to ensure public access to the beach and shoreline is preserved.

One of the biggest public objections to SB-9 projects will be parking. Santa Barbara's ordinance deals with it by requiring two spaces per unit (in the Coastal Zone) instead of Del Mar's requirement of one-space per unit. It would be helpful if staff could provide an estimate of how many SB-9 eligible lots will be exempted from parking requirements due to their proximity to transit.

Lastly—based on my interpretation of both the proposed Del Mar ordinance and the Santa Barbara ordinance—it appears that Santa Barbara has attempted to mitigate the impact of SB-9 on its entire Coastal Zone whereas Del Mar has opted to exempt only its LCP overlay and Special Hazard zones from SB 9. It would also be helpful to know why the City's proposed ordinance only calls out the R-1 lots east of Camino Del Mar as SB 9 eligible. Whether or not this is the most equitable way to implement the SB 9 policy in Del Mar is certainly open for debate.

Thank you for considering this feedback. I am hopeful that we can approve some effective Objective Guidelines for SB 9 projects that we can also apply to ADU's.

Sincerely,

Richard Jamison
Crest Road
Del Mar

Attachment



TWO-UNIT RESIDENTIAL HOUSING (SB-9)

SUPPLEMENTAL APPLICATION



GENERAL INFORMATION

WHAT IS TWO-UNIT RESIDENTIAL HOUSING?

Effective January 2022, ordinance amendments to Santa Barbara Municipal Code Section 30.185.440, Chapter 28.80, and Chapter 27.60 will implement California Senate Bill 9 (SB-9). SB-9 allows duplexes (two-unit housing) and urban lot splits (creation of two new lots) in areas of the City that are zoned to typically allow only one unit per lot. SB-9 projects are exempt from discretionary review if the project is consistent with objective zoning, design standards, and subdivision standards.

WHERE DOES IT APPLY?

SB-9 applies in areas of the City zoned for single unit residential (RS – Residential Single Unit Zones and A, E, and R-1 in the Coastal Zone). It does **NOT** apply in any other zoning districts including R-2 zones, multi-unit zones, or office, commercial, and manufacturing zones.

CAN I SELL THE TWO UNITS SEPARATELY?

Yes, each of the units in a two-unit residential development may be sold separately by using an urban lot split. An urban lot split (SBMC Chapter 27.60) is an additional method to subdivide single-unit zoned lots into no more than two lots. To be approved, a parcel map for an urban lot split must be included with a Building Permit (BLD) application for two-unit residential development which will be reviewed concurrently. Building permits related to urban lot splits may not be issued until the parcel map is recorded per the Subdivision Map Act.

WHERE IS SB-9 PROHIBITED?

Certain properties are not able to use SB-9, as determined by both state law and the City's municipal code, including locations with the following features:

- × Within 35 feet of a creek, watercourse, wetlands, or habitat for protected species
- × Hazardous waste site, unless cleared for residential use
- × Prime farmland, or land designated for agricultural protection or preservation
- × Within delineated earthquake fault zone, unless complies with seismic protection building code standards
- × Within a special flood hazard area or regulatory floodway, unless complies with floodplain management criteria
- × Lands identified for conservation in conservation plan or easement
- × Foothill or Extreme Foothill High Fire Hazard Area
- × Landmark or Historic District Overlay Zone, or on a lot with a designated City Landmark or Structure of Merit
- × Demolition or alteration of housing with rents restricted to levels affordable to moderate, low, or very low income
- × Demolition or alteration of housing subject to rent or price control; or housing subject to Ellis Act provisions within 15 years
- × Demolition or alteration of housing that has been occupied by a tenant in the last 3 years

WHAT RULES APPLY IN HIGH FIRE HAZARD ZONES?

SB-9 is prohibited in the Foothill and Extreme Foothill High Fire Hazard Area as shown in the City's [Community Wildfire Protection Plan](#), but is allowed in the Coastal and Coastal Interior High Fire Hazard Area. However, both proposed and existing development must comply with high fire hazard standards in those areas, including no tandem parking, fire sprinklers, and smaller unit sizes.

ARE THERE ANY AFFORDABILITY REQUIREMENTS?

Yes. The City's ordinance requires at least one of the units in each two-unit residential development, or at least one unit on any lot created pursuant to an urban lot split, to be constructed and offered for sale or for rent as a moderate, low, or very low-income unit. A unit in the Coastal Zone will be limited for sale or rent at levels affordable to low-income households. See [Affordable Housing Policies & Procedures](#).

CAN ONE OR BOTH UNITS BE RENTED SHORT TERM?

No, state law prohibits rentals less than 30 days for two-unit residential development projects. You will be required to record a Covenant that outlines the requirements regarding the rental terms of a two-unit residential development project.

IS OWNER-OCCUPANCY REQUIRED?

No, owner-occupancy is not a requirement for two-unit residential development. However, in order to approve an urban lot split, the property owner must sign a statement indicating that the owner intends to occupy one of the housing units located on a lot created by the parcel map as their principal residence for a minimum of three years from the date of the recording of the parcel map.

CAN I DEMOLISH AN EXISTING BUILDING?

Yes, but if nonconforming it must be rebuilt in a conforming location or in the same location, dimension, and floor area as the existing building. SB-9 does not allow the demolition or alteration of the following:

- Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income
- Housing that has been occupied by a tenant in the last three years

DO I NEED SEPARATE UTILITY CONNECTIONS?

Yes, a new City water meter located in the public right-of-way is required for all new dwelling units created using SB-9. A two-unit development on one lot may share a single sewer lateral depending on the condition of the lateral. For urban lot split projects, a separate sewer lateral is required for each lot. A separate Public Works permit is required for all water meter and sewer lateral installations.

CAN I HAVE BOTH AN ADU AND TWO-UNIT HOUSING ON MY LOT?

Yes, ADUs are allowed on lots developed with one or more residential units. For example, if your lot is developed with an existing house, you could add one additional dwelling unit and either one attached ADU or two detached special ADUs for a sum total of four units. Per state law, a junior accessory dwelling unit (JADU) is only allowed with a single-unit residence; therefore, a JADU may **not** be added if there is more than one dwelling unit on a lot. On an urban lot split, no more than two units (including ADUs) may be permitted on each lot. For more information, see the [Accessory Dwelling Unit Guide](#).

CAN I USE SB-9 IN THE COASTAL ZONE?

Yes, but SB-9 does not overrule the California Coastal Act which means that two-unit residential projects and urban lot splits must comply with the policies of the City's Coastal Land Use Plan. Projects proposed in the Coastal Zone may have different standards than inland projects, such as:

- **Parking:** Two covered or uncovered parking spaces are required per unit to ensure public access to the beach and shoreline is preserved.
- **Minimum Lot Size.** Urban lot splits in the Coastal Zone must involve lots at least twice the size of the minimum lot size to comply with the Coastal LUP land use designation.
- **Coastal Zone Review:** A Coastal Development Permit is required, and you must complete the planning approval process prior to submitting a building permit application. More information is available on the [Coastal Zone Review](#) supplemental application.

HOW TO SUBMIT

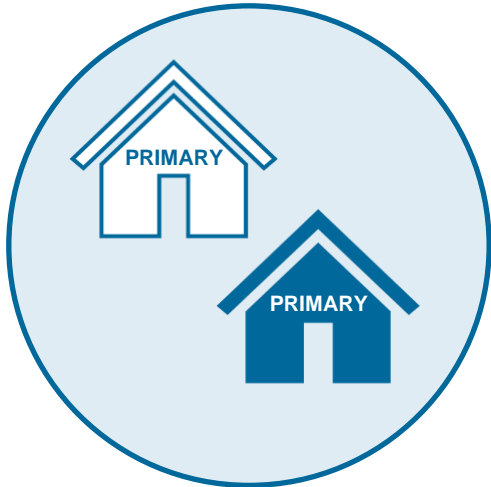
All applications, including all supporting plans and documents, are accepted online via our [Accela Citizen Access Portal \(ACA\)](#). More information: [Electronic Submittals](#).

WHAT TO SUBMIT

Complete the forms and provide any supporting materials described in this Supplemental Application and submit it along with a complete [Building Permit \(BLD\)](#) application. There may be some deferred submittals for projects that include a parcel map for an urban lot split.



WHAT ARE MY OPTIONS FOR NEW UNITS?



Add One Unit

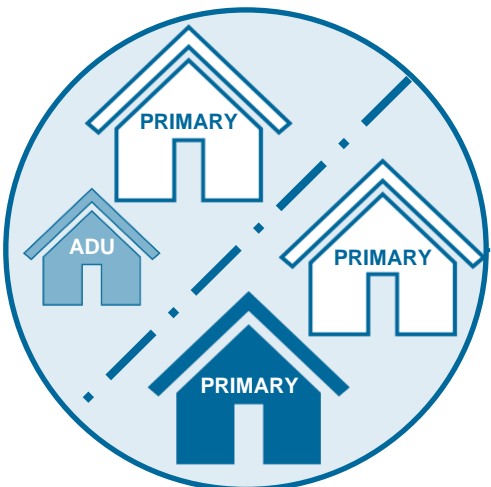
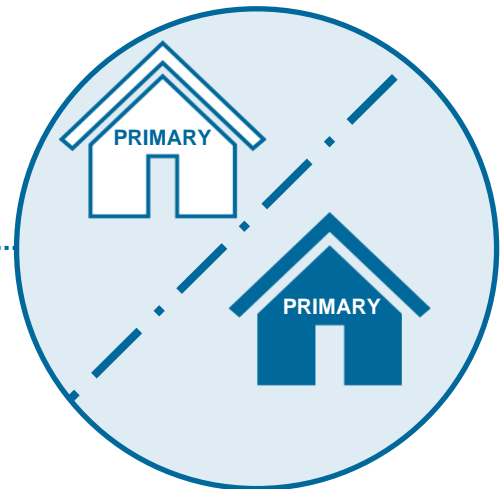
If you have one existing residential unit, **add one new unit** that is any of the following :

- ✓ Attached
- ✓ Detached
- ✓ Converted Portion of House
- ✓ Converted Garage or Accessory Bldg.

Split The Lot

You can add a unit and subdivide into two lots of approximately equal area :

- ✓ New lot must be at least 40% of the size of the original lot
- ✓ Minimum lot size 1,200 sq. ft. each



Add Up to Four Units

You can subdivide into two lots and add two units per lot (maximum four units) :

- ✓ Two primary units to each lot or
- ✓ One primary unit and one ADU

Or if you don't subdivide, you can build two primary units and up to two special ADUs



WHAT OBJECTIVE STANDARDS APPLY TO SB-9 PROJECTS?

This table summarizes the objective zoning and subdivision requirements for two-unit residential housing SBMC Section 30.185.440 or Ch. 28.80 (Coastal Zone) and urban lot splits (Ch. 27.60).

REQUIREMENT	TWO-UNIT HOUSING	URBAN LOT SPLIT
APPLICABLE ZONES	Residential Single Unit Zones only – RS (Inland) and A, E, and R-1 (Coastal Zone)	
ALLOWED SITES	On an existing or proposed lot, and developed with a single-unit residence or a vacant lot. Not allowed in: <ul style="list-style-type: none"> Foothill or Extreme Foothill High Fire Hazard Area; or Landmark or Historic District Overlay Zone, or designated City Landmark or Structure of Merit 	On an existing legal lot, limited to residential uses only, and: <ul style="list-style-type: none"> Parcel cannot be previously established with an urban lot split Neither the owner, nor any person acting in concert with the owner, may subdivide if they split an adjacent lot using an urban lot split
OWNER-OCCUPANCY	Not Required	Owner must sign an affidavit stating intent to occupy one of the units as principal residence for 3 years
AFFORDABILITY	Inland – One unit for sale or for rent as a moderate, low, or very low-income unit Coastal – One low-income unit required	Comply with two-unit housing standards
MINIMUM LOT SIZE AND STREET FRONTAGE	No minimum lot size requirement	Inland – Lot size at least 40% of original lot and a minimum of 1,200 square feet Coastal – 2 x minimum lot size per zone No flag lots; street frontage per zone
UNITS PER LOT	2 main units; plus 1 or 2 ADUs allowed	2 units total per newly created lot (includes <u>all</u> units: Primary, ADU, JADU)
FLOOR AREA MINIMUM	Studio unit = 220 sq. ft. All other units = 400 sq. ft.	Comply with two-unit housing standards
FLOOR AREA MAXIMUM	Total floor area may not exceed 85% of max FAR; each unit may not exceed: <ul style="list-style-type: none"> Lots up to 14,999 sq. ft. <ul style="list-style-type: none"> with 1-BR or studio: 850 sq. ft. with 2+ BR: 1,000 sq. ft. Lots over 15,000 sq. ft.: 1,200 sq. ft. High Fire Hazard Areas: 800 sq. ft. If attached, < 50% of existing area 	Comply with two-unit housing standards

REQUIREMENT	TWO-UNIT HOUSING	URBAN LOT SPLIT
BUILDING SEPARATION	<ul style="list-style-type: none"> Main Buildings = 10 feet Accessory Buildings = 5 feet 	Comply with two-unit housing standards
HEIGHT MAXIMUM	<p>Must meet Solar Access Height and not exceed the following:</p> <ul style="list-style-type: none"> Height of an existing unit; or 25 feet and maximum 2 stories outside High Fire Hazard Area; or 16 feet and maximum 1 story in the High Fire Hazard Area; and Plate heights on any new second story 8 feet maximum 	Comply with two-unit housing standards
OPEN YARD	As required for two-unit development per the Zoning Ordinance	Comply with two-unit housing standards
SETBACKS	<p>Comply with applicable setbacks in the zone, except:</p> <ul style="list-style-type: none"> Interior setbacks may be reduced to 4 feet for 1 story buildings and portions under 17 feet in height No setback required to convert or substantially redevelop an existing structure to two-unit housing 	Comply with two-unit housing standards
PARKING	<p>One on-site space required (covered or uncovered) for each unit, unless:</p> <ul style="list-style-type: none"> Within 1/2 mile of high-quality transit corridor or major transit stop Car share vehicle within one block <p>Coastal Zone: Two spaces per unit Bicycle: If no access to a garage, one long-term bicycle space required per unit</p>	Comply with two-unit housing standards
VEHICULAR ACCESS	<p>If automobile parking is provided, a paved driveway is required as follows:</p> <ul style="list-style-type: none"> Shared driveway allowed up to 2 lots More than one driveway prohibited on lots < 100 feet of street frontage 3 foot landscape buffer required 	<p>Access to a public street is required. Driveway easement allowed up to 2 lots:</p> <ul style="list-style-type: none"> Width 1-2 Units: 10 feet to 16 feet Width 3-4 Units: 20 feet minimum Length: 20 feet minimum Not allowed 25 feet to intersection
PEDESTRIAN ACCESS	<p>Paved pedestrian walkway is required:</p> <ul style="list-style-type: none"> Width 1-2 Units: 3 feet minimum Width 3-4 Units: 5 feet minimum Length: 200 feet maximum 	<p>If no automobile parking is provided, access may be a pedestrian easement:</p> <ul style="list-style-type: none"> Width: 5 feet minimum Length: 200 feet maximum



WHAT ARE MY OPTIONS FOR URBAN LOT SPLIT?

Figure A – Lot Access

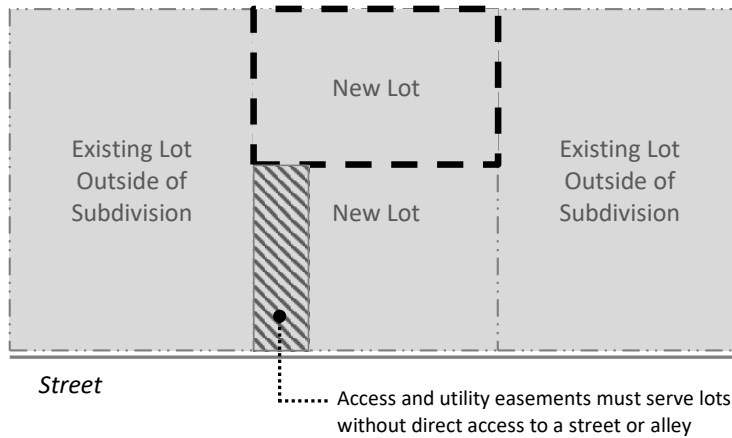


Figure B – One or Two Units

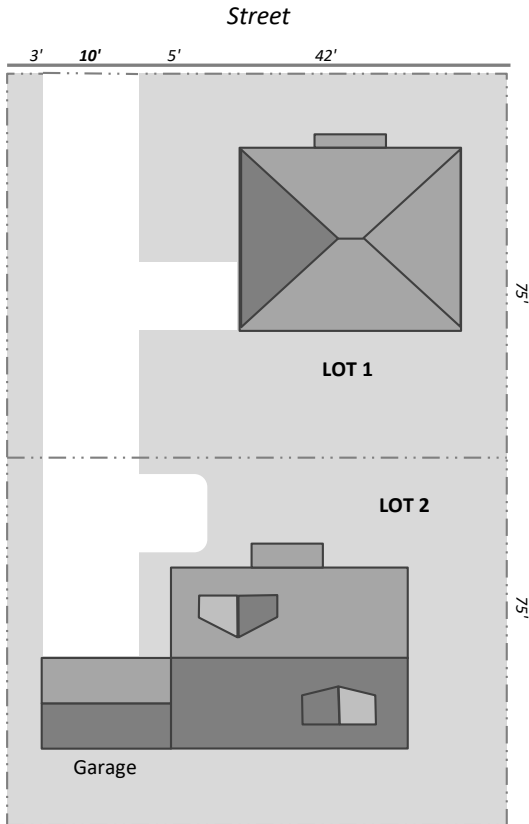


Figure C – Three or More Units

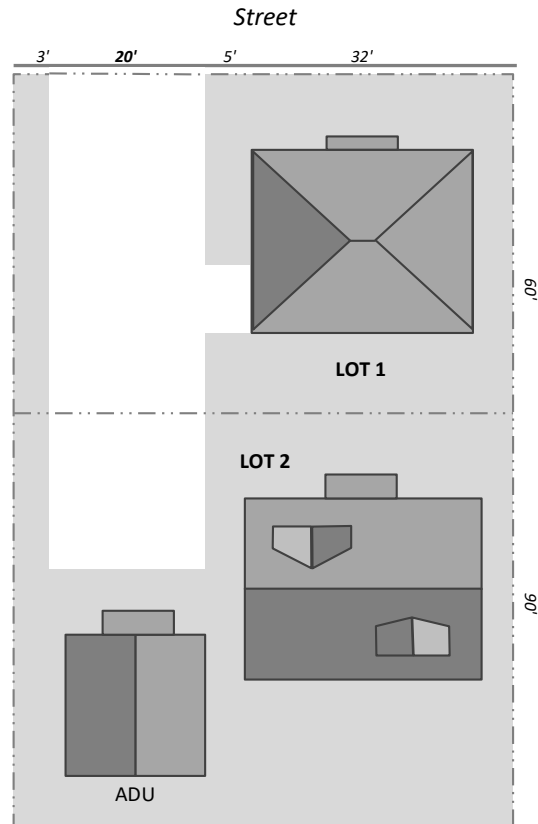


Figure D – Direct Access

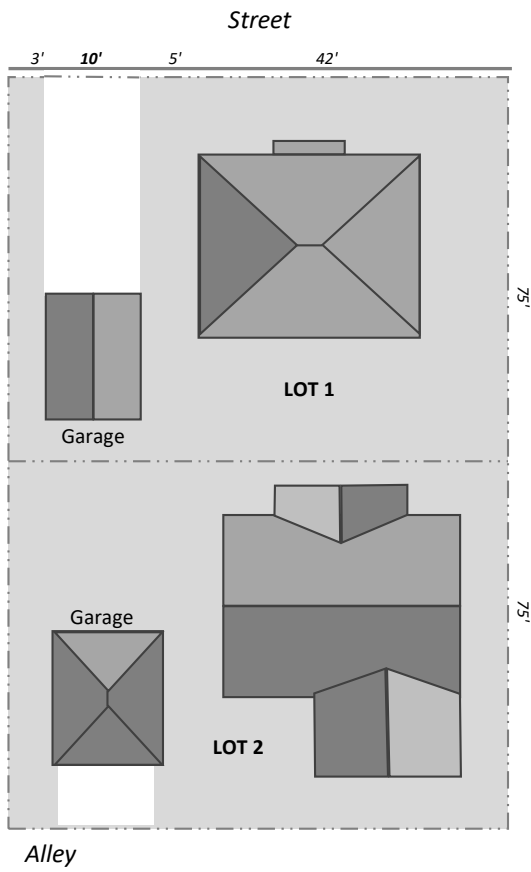


Figure E – Pedestrian Access Only

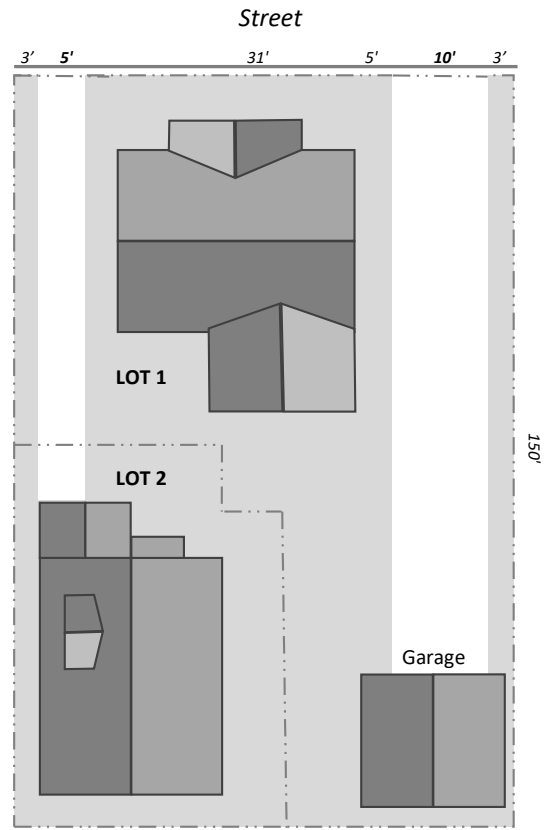
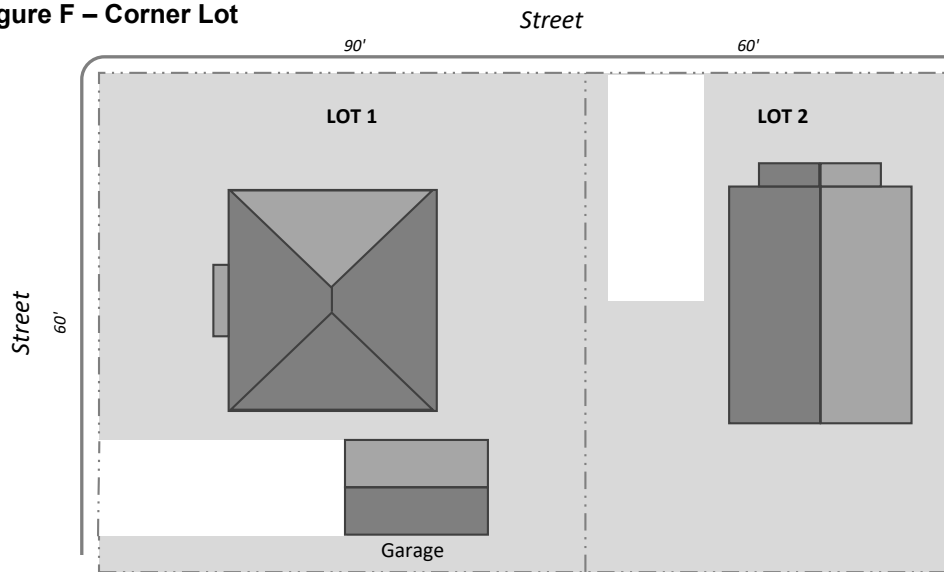


Figure F – Corner Lot





SUBMITTAL INFORMATION

FEES

Payment of fees is required for all applications prior to application review or processing.

Fees

Payment via check, electronic check, or credit card is required before project review or processing. Once the application is submitted, City staff will follow up electronically with an invoice for the total fee amount. Fees may be paid online, mailed, faxed, or dropped off at 630 Garden Street for processing. If paying by mail or fax, a [Fee Payment Submittal Sheet](#) is required. For more information, see [How to Pay Invoiced Fees](#).

PHOTOGRAPHS

Photographs are required for all applications.

Photographs

Submit current color photographs of the site as viewed from the street and provide a photo of the front and each exterior elevation of all buildings on the property.

PLANS

Plans are required for all applications.

Project Plans

See the [Project Plan Submittal Requirements](#) for the required contents of plan submittals.

Landscape Plan

Complete landscape and irrigation plans are required. See the [Landscape Plan Submittal Guide](#). Show 35-foot buffer to creek, watercourse, wetlands, or habitat for protected species.

Supporting Details

Submit any additional supporting information (color details, manufacturer specification sheets, etc.) necessary to show matching design style. Additional guidance on architectural styles is here: [Single Family Residence Design Guidelines](#) and [Historic Resource Design Guidelines](#).

URBAN LOT SPLIT

The following additional information is required for any project that proposes an urban lot split.

Preliminary Title Report

Submit a recent (within 3 months of submittal date) Preliminary Title Report. Your title officer will need to provide a Subdivision Guarantee to the County Recorder just prior to recording the parcel map.

County Tax Collector Memo

Deferred Submittal. Submit a memo from the County Tax Collector’s Office indicating that property taxes have been paid for the current year and for the next fiscal year. You may elect to defer this submittal until prior to the parcel map records and the Building Permit is issued.

LLC Statement of Information

If the property is owned by a Limited Liability Company (LLC), submit a copy of the California Statement of Information to verify company and managers required to sign the parcel map.

Closure Calculations

A licensed land surveyor must prepare calculations for each individual lot, and details of City’s Control Survey Network points in relationship to the subdivision with measured connections.

Parcel Map

A licensed land surveyor must submit a parcel map per SBMC Chapter 27.09. Surveyor must request a new parcel map number from the City’s database.

Parcel map dimensions must be 18" x 26" and to scale not less than 1:100 and show:

- Title Sheet with the relevant wording from the [County Standard Statements and Certificates](#) including that the subdivision was approved as an Urban Lot Split per SBMC Chapter 27.60
- Total area (acreage and square feet) of each proposed lot
- Bearing and distance of existing and proposed property lines
- Zoning District
- Location of any existing and proposed easements for access or public utilities to serve a lot created by the subdivision
- Name and dimensions, including right-of-way and improved area, of public and private streets or public alleys adjoining the parcel
- Location of existing or proposed pedestrian pathway access to the public right of way

Submit an additional parcel map sheet pursuant to Subdivision Map Act Section 66434.2 showing:

- Location and use of all existing and proposed buildings and structures
- Zoning setbacks for existing and proposed lots
- Location of all existing water, sewer, electricity, storm drain, or gas service lines, pipes, systems
- Location of any existing trees larger than 4" in diameter measured at 4'-6" above the base and any such trees proposed for removal
- Area of the parcel that has a slope of 25% or greater by way of contours at 5-foot intervals
- Area of the parcel that is a watercourse as defined in SBMC Section 14.04.020
- Curb, gutter, sidewalk, parkway, and street trees: type, location, and dimensions
- Location of existing/proposed driveway dimensions, materials, and slope and cross slope
- If in the Coastal Zone, location of Coastal Bluff Edge and Coastal Bluff Edge Development Buffer as referenced in the Local Coastal Land Use Plan

Mylars and Recorded Agreements

Deferred Submittal. After staff approves the parcel map, the surveyor will be notified to plot mylars for signature. Submit mylar sheets and originals of all recorded agreements executed by the property owners.

1 DESIGN STANDARDS CHECKLIST

Applicants must complete and submit this Design Standards Checklist to demonstrate the project’s consistency with the Architectural Design Criteria. Note sheet number where items are found on plans.

A. ARCHITECTURAL DESIGN CRITERIA	Comply	N/A	Sheet #
1. Shiny Roofing and Siding. There are no shiny, mirror-like, or of a glossy metallic finish roofing or siding materials proposed.	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Roof Tile. If a clay tile roof is proposed, it is two-piece terra cotta (Mission “C-tile”); or S-tile is only proposed in order to match existing unit S-tile.	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Skylights. There are no “bubble” or dome skylights proposed; skylights have either flat glass panels, or no skylights are proposed.	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Glass Guardrails. There are no glass guardrails proposed; or glass guardrails are proposed in order to match existing glass guardrails.	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Garage Conversion. The existing garage door opening is being replaced with siding, or residential windows and doors, to match the existing garage walls and detailing; or no garage conversion is proposed.	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. Grading. There is no more than 250 cubic yards of grading (cut or fill under the building footprint and outside the main building footprint).	<input type="checkbox"/>	<input type="checkbox"/>	_____
7. Height. At least one of the following applies (check one): <input type="checkbox"/> a. The proposed unit does not exceed height of the existing unit; or <input type="checkbox"/> b. The proposed unit is not in a High Fire Hazard Area and is a maximum of 25 feet in height and two stories, or <input type="checkbox"/> c. The proposed unit is in a High Fire Hazard Area and is a maximum of 16 feet in height and one story, and <input type="checkbox"/> d. If a 2 nd story is proposed, the plate height is a maximum of 8 feet.	<input type="checkbox"/>	<input type="checkbox"/>	_____
8. Landings, Decks, and Balconies. At least one of the following applies if the proposed project is either two stories in height or 17 feet or taller: <input type="checkbox"/> a. Upper-story unenclosed landings, decks, or balconies greater than 20 sq. ft., that face or overlook the adjoining property, are <u>not</u> proposed; or <input type="checkbox"/> b. Upper-story unenclosed landings, decks, or balconies greater than 20 sq. ft., that face or overlook the adjoining property, are located a minimum of 15-feet from all interior lot lines; or <input type="checkbox"/> c. Upper-story unenclosed landings, decks, or balconies greater than 20 sq. ft. are less than 15-feet from the interior lot lines; and: <input type="checkbox"/> They do not face or overlook the adjoining property, and	<input type="checkbox"/>	<input type="checkbox"/>	_____

A. ARCHITECTURAL DESIGN CRITERIA	Comply	N/A	Sheet #
<input type="checkbox"/> An architectural screening element with 5-foot minimum height is proposed.			
9. Upper-Story Windows. At least one of the following applies if the proposed project is either two stories in height or 17 feet or taller:	<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/> a. Upper-story windows that face or overlook the adjoining property are not proposed within 15 feet of the interior lot lines; or			
<input type="checkbox"/> b. Upper-story windows that face or overlook the adjoining property and are located within 15 feet of the interior lot lines, are installed a minimum of 42-inches above finish floor.			
10. Design Style. At least one of the following applies:	<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/> a. On a site already developed with an existing unit, the new unit is designed and constructed to match the existing paint color and exterior building materials, including but not limited to siding, windows, doors, roofing, light fixtures, hardware, and railings.			
<input type="checkbox"/> b. Two new units are proposed, and the units are constructed using the same architectural style, exterior building materials, colors, and finishes.			
11. Historic Resources Inventory. If any buildings are listed in the Historic Resources Inventory, the proposal would not cause a substantial adverse change in the significance of any historic resource. If applicable, please contact the City’s Architectural Historian for a historic resource evaluation prior to applying for this determination.	<input type="checkbox"/>	<input type="checkbox"/>	_____

2 RECORDED COVENANT FORM

STAFF USE ONLY:

<input type="checkbox"/> Accessory Dwelling Unit (ADU):	<input type="checkbox"/> Form 1 (ADU owner-occupancy)	<input type="checkbox"/> Form 4 (SB-9 Rental)
<input type="checkbox"/> Junior Accessory Dwelling Unit (JADU):	<input type="checkbox"/> Form 2 (ADU no owner-occupancy)	<input type="checkbox"/> Form 5 (SB-9 Owner)
<input type="checkbox"/> Two-Unit Residential (SB-9):	<input type="checkbox"/> Form 3 (JADU owner-occupancy)	<input type="checkbox"/> Form 6 (SB-9 Coastal)
<input type="checkbox"/> <i>Remove Existing Owner-Occupancy Covenant:</i>	Inst. # _____ Date Recorded: _____	
<input type="checkbox"/> <i>Remove Existing Zoning Compliance Declaration:</i>	Inst. # _____ Date Recorded: _____	

RECORD & PROPERTY INFORMATION

Today's Date:	BLD RECORD # :
Project Address:	APN:

APPLICANT COMPLETE & SIGN:

CONTACT PERSON *(Name of person to contact about the Covenant)*

Name:	Company:
Address:	ZIP:
Email:	Phone:

LLC AUTHORIZED SIGNER *(If applicable, name of LLC member authorized to sign legal agreements)* N/A

Name:	Title:
Email:	Phone:

OWNER'S NAMES *(List ALL property owner's names as they appear on Title)*

Name:	Name:
Name:	Name:

UNIT INFORMATION

Number of Bedrooms in New Unit:	Number of Anticipated Occupants:
Anticipated Monthly Rental Rate: \$	Intended to be free to family or caregiver? <input type="checkbox"/> Yes <input type="checkbox"/> No

Signature: _____ **Date:** _____

3 COVENANT INSTRUCTIONS

- 1. New Applications.** After the initial building permit submittal, applicant shall submit this Recorded Covenant Form. This will begin the Recorded Covenant process. On new applications, expect to receive the Covenant document in two to three weeks after submitting this form.
- 2. Release of Existing Covenant.** To release an existing Owner-Occupancy Covenant, a new Covenant must be prepared, executed, and recorded, along with processing fees and recording costs. Due to limited staff resources, we will process requests in the order received but it could take several months to complete the process.
- 3. Receiving the Document.** After you submit this completed form, City staff will prepare the Covenant document for the owner to sign and will email it to the contact person listed on this form. Please print it single-sided, sign, and notarize the document.
- 4. Return the Executed Document.** Mail the original executed Covenant to the Planning Division via USPS to the following address:

Community Development Department
 Attn: Covenant Processing
 P.O. Box 1990
 Santa Barbara, CA 93102-1990

Once the document is received, staff will acquire remaining city signatures and record the final document at the County recording office. The city will email you a copy of the final Covenant. The building permit cannot be issued until the final Covenant is recorded.

- 5. Avoid common notary certificate mistakes.** Minor errors on a notary certificate can lead to major headaches later — including rejection of the documents by the County recording office. Do not scan, fax, photograph, or otherwise alter, add, or amend any portion of the document. The original hardcopy with WET signatures must be provided back to the city. Be sure to include The [California All Purpose Acknowledgment Form](#) for the owner signature. **The names on the acknowledgment page must match EXACTLY how the names appear on the Covenant or it will be rejected by the County recording office.**

This is a screenshot of a recorded covenant form. It features two main signature sections. The first is for the owner, with the text: "OWNER: ALEXANDER MYERS FRANKS AND ELLEN ROMAN FORNIA, HUSBAND AND WIFE AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP". Below this, there are handwritten signatures and the printed name "ELLEN ROMAN FORNIA". The second section is for the city attorney, with the text: "APPROVED AS TO FORM: City Attorney" and "By: Ariel Cassino, City Attorney". There is a handwritten signature above this text.

**Your name
should
match
exactly!**

This is a screenshot of a California Acknowledgment form (CIVIL CODE § 188). It includes fields for the state (California), county (Santa Barbara), and the notary public's name and commission expiration date. The notary's name is "ALEXANDER M. FRANKS, FRANKS, A.M.S., ELLEN, A.M.S." and the commission expires on "12/31/2023". There is a handwritten signature in the "Signature" field. The form also has an "OPTIONAL" section for describing attached documents and a "Classification Claimed by Signer" section with checkboxes for various roles like "Signer's Attorney" or "Signer's Representative".

4 PROPERTY OWNER'S AFFIDAVIT

Under penalty of perjury the following declarations are made:

- a. The undersigned is the owner of this property.
- b. The information presented is true and correct to the best of my knowledge.
- c. **Public Record.** I understand that any information provided becomes part of the public record and can be made available to the public for review and posted to the city website.
- d. **Posted Sign.** Within five calendar days after submitting an initial building permit application to the City, I agree to obtain and install a posted sign on the property. The sign shall remain posted until a building permit is issued, or the application expires or is withdrawn.
- e. **Protected Housing.** I certify that the project does not include the demolition or alteration of any of the following types of housing: (i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income; (ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power; (iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code to withdraw accommodations from 27 rent or lease within 15 years before the date that the development proponent submits an application; (iv) Housing that has been occupied by a tenant in the last three years.
- f. **No Prior Urban Lot Split.** If an urban lot split is proposed, I certify that the parcel has not been established through prior exercise of an urban lot split; and that neither the owner of the parcel being subdivided, nor any person acting in concert with the owner, has previously subdivided an adjacent parcel using an urban lot split.
- g. **Owner-Occupancy.** If an urban lot split is proposed, I, the property owner intend to occupy one of the housing units located on a lot created by the parcel map as my principal residence for a minimum of three years from the date of the recording of the parcel map.
- h. **Rental Terms.** I understand that rental terms of any unit created by the project shall not be less than 31 consecutive days, nor shall rental terms allow termination of the tenancy prior to the expiration of at least one 31-day period occupancy by the same tenant.
- i. **Residential Uses.** I understand uses allowed on a lot are limited to residential uses only.

PROPERTY OWNER:

Owner's Signature

Date

Owner's Name (printed)

ORDINANCE NO. 1671

EXTENSION OF AN URGENCY ORDINANCE OF THE CITY OF LAGUNA BEACH, CALIFORNIA, ADDING CHAPTER 25.95 TO THE CITY OF LAGUNA BEACH MUNICIPAL CODE REGULATING SINGLE FAMILY RESIDENTIAL ONE AND TWO-UNIT DEVELOPMENTS AND URBAN LOT SPLITS PURSUANT TO CALIFORNIA SENATE BILL 9 (SB 9)

WHEREAS, on September 16, 2021, Governor Gavin Newsom signed into law Senate Bill 9 (SB 9, Chapter 162) which became effective on January 1, 2022, amending Government Code Sections 65852.21, 66411.7, and 66452.6 requiring jurisdictions allow for certain two-unit housing developments and urban lot splits to be approved ministerially in single-family residential zones; and

WHEREAS, SB 9 allows local agencies to impose objective zoning, subdivision, and design review standards in compliance with Government Code Sections 65852.21 and 66411.7; and

WHEREAS, the City of Laguna Beach, pursuant to the provisions of the California Environmental Quality Act (“CEQA”) (California Public Resources Code Sections 21000 et seq.) and State CEQA Guidelines (Sections 15000 et seq., Title 14 the California Code of Regulations) has determined that this Ordinance is statutorily exempt from the provisions of CEQA because this Ordinance is not considered a “project” pursuant to Government Code Section 65852.21(j) and Government Code Section 66411.7(n) and because it can be seen with certainty that this Ordinance will not have an effect on the environment pursuant to CEQA Guidelines Section 15061; and

WHEREAS, the City desires to amend its local regulatory scheme to comply with Government Code Sections 66411.7 and 65852.21 and to appropriately regulate projects governed by SB 9; and

WHEREAS, it is in the best interest of the City and public to provide for the prompt adoption of local regulations intended to implement the requirements of the new state law allowing for two-unit housing developments and urban lot splits pursuant to SB 9;

WHEREAS, on March 15, 2022, the City Council unanimously adopted an Urgency Ordinance (Ordinance No. 1668) adding Chapter 25.95 to the Laguna Beach Municipal Code regulating single family residential two-unit developments and urban lot splits pursuant to SB 9;

WHEREAS, the City Council wishes to extend the term of the Urgency Ordinance by 10 months and 15 days as allowed by Government Code Section 65858.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein as though set forth in full.

SECTION 2. Pursuant to California Government Code Section 65858, Urgency Ordinance No. 1668 is extended for 10 months and 15 days by a four-fifths vote based upon the finding set forth in Section 3.

SECTION 3. Urgency Findings. The adoption of this Ordinance is necessary to preserve the public health, safety and welfare to facilitate the orderly implementation of Senate Bill 9 related to housing developments and urban lot splits by ensuring that objective local zoning, subdivision and design standards are in place to implement the new state law in order to preserve the single-family character of neighborhoods in the City to the greatest extent allowable under the new state law.

SECTION 4. After consideration of the staff report and all of the information, testimony, and evidence presented at the public hearing, the City Council finds and determines that Zoning Code Amendment 22-0286 as identified in Exhibit “A”, will not adversely affect the health, safety or welfare of the residents within the community, in the public interest of the City of Laguna Beach, is consistent with the Laguna Beach General Plan and its various elements, and will not be contrary to other goals, objectives and/or policies of the Laguna Beach Zoning Code (Title 25 of the Laguna Beach Municipal Code).

Furthermore, the approval of urban lot splits as well as one and two-unit projects based solely on the default standards currently in the Laguna Beach Municipal Code, without appropriate regulations governing lot configuration, unit size, height, setback, landscape, architectural review, among other things, would threaten the character of existing neighborhoods, and negatively impact property values, personal privacy, views, and fire safety. These threats to public safety, health, and welfare justify adoption of this ordinance as an urgency ordinance to be effective upon adoption on March 15, 2022.

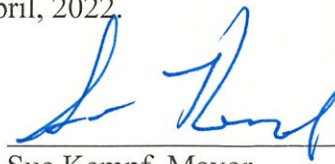
SECTION 5. The City Council does hereby determine or find that Zoning Code Amendment 22-0286 is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Government Code Section 65852.21(j) and Section 66411.7(n) because it is not considered a “project” under Division 13 (commencing with Section 21000) of the Public Resources Code. The City Council directs staff to prepare and file with the County of Orange Clerk a notice of exemption within five (5) working days of the adoption of this ordinance.

SECTION 6. The City Council does hereby approve and amend specified provisions in the Laguna Beach Zoning Code (Title 25 of the Laguna Beach Municipal Code) as identified in Exhibit “A” attached to Ordinance No. 1671.

SECTION 7. Severability. If any portion of this Ordinance is found to be unenforceable, each such provision shall be severed, and all remaining portions of this Ordinance shall be enforced to the maximum extent legally permissible.

SECTION 8. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published in the manner required by law in the City of Laguna Beach.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Laguna Beach on this 26th day of April, 2022.



Sue Kempf, Mayor

ATTEST:


Ann Marie McKay, City Clerk

I, Ann Marie McKay, City Clerk of the City of Laguna Beach, California, DO HEREBY CERTIFY that the foregoing Ordinance was adopted by the City Council of said City at a regular meeting of said City Council held on the 26th day of April, 2022 and that it was so adopted by called vote as follows:

AYES:	COUNCILMEMBER(S) Blake, Iseman, Weiss, Whalen, Kempf
NOES:	COUNCILMEMBER(S) None
ABSTAIN:	COUNCILMEMBER(S) None
ABSENT:	COUNCILMEMBER(S) None


Ann Marie McKay, City Clerk

EXHIBIT A

Modifications shown in strike-through and underline

Senate Bill 9 (SB 9) Housing Development Approvals and Urban Lot Splits

25.95.010 Intent and Purpose.

In accordance with California Government Code Sections 65852.21, 66411.7, and 66452.6, the City intends for this Article to regulate SB 9 urban lot splits and the ability to develop or create one or two residential units within a single-family residential zone to the greatest extent feasible as permitted under California housing laws, while retaining the character of the City's single-family neighborhoods. In doing so, and to ensure that no avoidable adverse impacts on the public health, safety, and general welfare result from the creation of multiple residential units on what previously only allowed a single-family dwelling, this Article prescribes standards for the approval of such units and SB 9 related units and SB 9 urban lot splits that limit the circumstances under which they may be permitted consistent with the purpose and intent of this Article. If there are any conflicts between this local ordinance and California Government Code Sections 65852.21, 66411.7, and 66452.6, then the state law preempts any local law.

25.95.040 SB 9 Housing Development and Lot Split Applicability.

A proposed SB 9 housing development containing no more than two residential units and/or a parcel map for an SB 9 urban lot split of a parcel within the R-1 Residential Low Density Zone, R/HP Residential/Hillside Protection Zone, Lagunita Zone and Three Arch Bay Zone shall be considered ministerially, without discretionary review or hearing, if the proposed SB 9 housing development and/or SB 9 urban lot split meet all of the following requirements:

- A. The parcel is not located on a site that is any of the following:
 1. Within a high or very high fire hazard severity zone, unless the subject site has adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
 2. A hazardous waste site unless the site has been appropriately cleared for residential use.
 3. Within a delineated earthquake fault zone, unless the development complies with applicable seismic protection building code standards.
 4. Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency, unless either of the following are met:
 - a. The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the City; or

EXHIBIT A

25.95.050 Standards and criteria for dwelling units created.

The following standards and criteria shall apply to all proposed residential units permitted under this Article. Notwithstanding these requirements, single family residential lots located within the R-1 Residential Low Density Zone, R/HP Residential/Hillside Protection Zone, Lagunita Zone and Three Arch Bay Zone shall be permitted to construct up to two dwelling units which are no less than 800 square feet and no greater than 1,000 square feet in floor area. For purposes of this section, any existing dwelling including any accessory dwelling unit or junior accessory dwelling unit, shall count towards the two dwelling unit maximum.

- A. **Setbacks.** All SB 9 housing developments shall maintain the front yard setback for the applicable zoning district in which the lot is located. However, SB 9 housing developments shall maintain a minimum four (4) foot setback on the side and rear yards. No setback shall be required for an existing structure or structure constructed in the same location and to the same dimensions as an existing structure. Whenever a side yard or rear yard abuts a street, a minimum setback of 10 feet shall be required on the street side yard and the setback for the zone shall apply to the rear street-side lot line.
- B. **Parking.** A minimum of one parking space shall be required for each SB 9 housing development.
- C. **Building separation, landscaping and lot coverage requirements.** Unless otherwise specified in this Article, an SB 9 housing development shall comply with the building separation, landscaping and lot coverage standards of the applicable zoning district in which the lot is located. The building lot coverage limitation shall include all structures, including the main residence, any SB 9 housing development, any accessory dwelling unit, garages, etc. The totality of the structure(s) on the lot shall not exceed the allowable building lot coverage specified in the zone in which the SB 9 housing development is proposed.
- D. **Short term rentals prohibited.** SB 9 housing developments shall only be rented or leased for a term longer than 30 days. A deed restriction prepared by the City shall be recorded on the subject property prior to issuance of building permits of the SB 9 housing development stating that any dwelling constructed upon property subject to the SB 9 housing development shall only be rented or leased for a term longer than 30 days and that the deed restriction runs with the land, with the provision that this will be enforced against future owners of the property.
- E. **Occupancy.** A deed restriction prepared by the City shall be recorded on the subject property prior to issuance of building permits for any SB 9 housing development stating that the property owner shall occupy one of the dwelling units created by an SB 9 housing development for a period of three years from the date of approval of the SB 9 housing development as his or her primary residence and that the deed restriction runs with the land with the provision that this will be enforced against future owners of the property for a period of three years from the date of approval.
- F. **Mobile homes/recreational vehicles.** SB 9 housing developments shall not consist of a mobile home or recreational vehicle.

EXHIBIT A

- G. Each housing unit must be a minimum of 800 square feet and no greater than 1,000 square feet.
- H. Maximum Height. All SB 9 housing developments shall be subject to a height limitation of sixteen (16) feet, and no new roof decks or balconies shall be located on a new structure.
- I. Exterior design, including materials, finishes, colors and landscape shall be compatible with existing buildings on the site (if any exist) and if two units are proposed, shall be compatible with one another.
- J. Comply with all provisions. Unless otherwise specified by the provisions of this chapter or State law, SB 9 housing developments shall be required to comply with all provisions of the underlying zoning designation and all regulations required for a primary single-family dwelling unit, including but not limited to all applicable building and construction requirements.
- K. Additional Units. No accessory dwelling unit (ADU) or junior accessory dwelling unit (JADU) shall be permitted on a lot which contains two SB 9 housing development units.
- L. Non-permitted use. No SB 9 housing development shall be established on any lot which has an existing non-permitted use with respect to the City's current use standards.
- M. The City shall review each SB 9 housing development application for any other issues related to adequacy of water or sewer services, and/or the impact of the proposed development on traffic flow, or public safety.
- N. Additional Requirements.
 - 1. All SB 9 housing developments shall be constructed upon a permanent foundation.
 - 2. All SB 9 housing developments shall include sufficient permanent provisions for living, sleeping, eating, cooking, and sanitation, including but not limited to interior washer and dryer hookups and kitchen facilities.
 - 3. All SB 9 housing developments must have separate utility connections and separate utility meters.
 - 4. Each SB 9 housing development unit shall be connected to the public sewer, and that connection shall be subject to a connection fee, or capacity charge, or both.
 - 5. All SB 9 housing developments must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by the City of Laguna Beach Municipal Code.
 - 6. Two-unit developments created by SB 9 t may be either freestanding or attached. Internal connections between units are prohibited. Each unit shall provide independent exterior entrance, kitchen, bathroom and laundry facilities.
 - 7. All exterior mechanical equipment such as air conditioners, water heaters and the like must meet Municipal Code requirements for setbacks, noise and screening.
 - 8. If trees larger than six-inch diameter trunks are removed to construct an SB 9 unit, the trees must be replaced with approved landscaping at a two-to-one ratio.

EXHIBIT A

9. Screen all new and existing windows, doors, decks, patios or entrances in direct line of sight to adjoining residences with fencing, walls, landscaping, privacy glass or similar privacy methods to maintain the greatest degree of privacy to adjacent residential units.
- 10.

25.95.060 Standards and criteria for SB 9 urban lot splits.

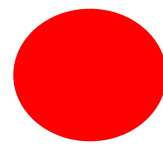
SB 9 urban lot splits must meet all the following requirements:

- A. The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area, provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.
- B. Both newly created SB 9 parcels shall be no less than 1,200 square feet with no zig-zag lot lines and no flag lots. The Community Development Director may waive these lot line standards when deemed technically necessary.
- C. Lots created from an SB 9 urban lot split may not be further subdivided.
- D. Neither the owner of the parcel being subdivided nor any person acting in concert with the owner may subdivide an adjacent parcel using an SB 9 urban lot split as provided in this Article.
- E. An SB 9 urban lot split shall comply with all applicable objective requirements of the Subdivision Map Act unless otherwise specified in this Article or State law.
- F. No dedications of right-of-way or construction of off-site improvements may be required for parcels being created by SB 9 urban lot splits. However, the City may require easements for the provision of public services and facilities.
- G. The street facing parcel of an SB 9 urban lot split shall contain a minimum of 30 feet of street frontage with direct and compliant vehicle access to the public right-of-way. The Community Development Director may authorize shorter street frontages when adequate vehicle access to both lots is demonstrated.
- H. Any lot created by an SB 9 urban lot split shall be limited to residential uses.
- I. A deed restriction prepared by the City shall be recorded on the subject property prior to issuance of the SB 9 urban lot split permit stating the following:
 1. That rental of any dwelling constructed or existing upon property subject to the SB 9 urban lot split shall be required to be rented or leased for a term longer than 30 days;
 2. That the property owner shall occupy one of the dwelling units upon a parcel created by an SB 9 urban lot split for a period of three years from the date of approval of the SB 9 urban lot split as his or her primary residence; and
 3. That the deed restriction runs with the land and each provision therein may be enforced against future owners of the property.
- J. Associated Permits. If an application for a SB 9 urban split triggers the requirement for a discretionary or ministerial permit other than a SB 9 urban lot split and/or a building permit (including but not limited to a Design Review and/or Conditional Use Permit), those associated permits must be applied for and obtained prior to application for an SB 9

EXHIBIT A

urban lot split application. The process for obtaining the associated permit(s) shall be as set forth in Chapter .05 of this title.

Jennifer Gavin



From: deftos <mdeftos@gmail.com>
Sent: Thursday, May 4, 2023 9:19 PM
To: Planning Mail Box
Subject: Red Dot Item 1 for May 9th Planning Commission Meeting
Attachments: Turner Center State Law, Local Interpretation.pdf; Turner Center SB 9 Implementing Ordinances Table.pdf

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Planning Department,

Please include the two attached documents as a red dot for the May 9 Planning Commission meeting.

Links to them are provided below if non-highlighted versions are preferred.

<https://turnercenter.berkeley.edu/research-and-policy/state-law-local-interpretation-senate-bill-9/>

<https://turnercenter.berkeley.edu/wp-content/uploads/2022/06/SB-9-Implementing-Ordinances-Table-FINAL.pdf>

Thanks,
Michael Deftos

RESEARCH AND POLICY

State Law, Local Interpretation: How Cities Are Implementing Senate Bill 9

**Muhammad Alameldin,
David Garcia**

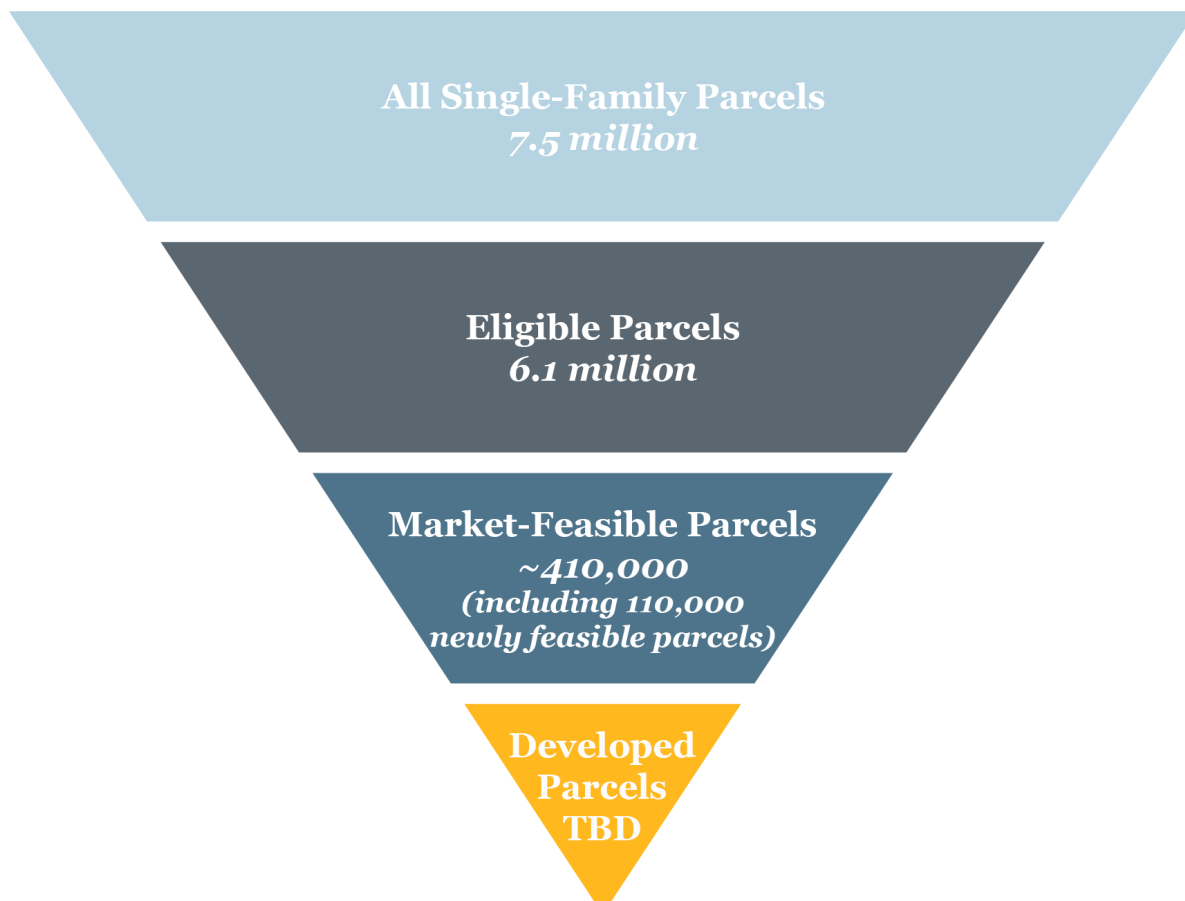
**PUBLISHED ON
June 8, 2022**

Introduction

Last year, Governor Gavin Newsom signed the California Housing Opportunity and More Efficiency (“HOME”) Act, otherwise known as Senate Bill 9, which was introduced by the Senate President pro Tempore Toni Atkins. This new law enables homeowners to split their single-family residential lot into two separate lots with each able to hold up to two homes. If utilized to its full potential, this law allows owners to create up to four units of housing on what was previously only a single-family home. The legislation represents a potentially sweeping change in a state that has historically held vast amounts of land for single-family only uses. However, recent media coverage has shown that localities may be taking advantage of the bill’s broad language to implement the HOME Act in ways that would limit the number of new homes built. A recent, extreme—and ultimately unsuccessful—example came from the city of Woodside, where council members proposed establishing the town as a mountain lion sanctuary to claim that the HOME Act did not apply to their community. The Attorney General pushed back, declaring that such a policy would not exempt the city from state housing law. Other localities have implemented less obvious—and likely more legally defensible—restrictions that may stymie meaningful new homebuilding as a result of the new law.

A 2021 Turner Center [analysis](#) estimated that the HOME Act could enable the creation of 700,000 new market-feasible homes throughout the state (Figure 1). As the report emphasized, however, this number is contingent on property owner interest and construction costs as well as contingent local factors such as adequate contractor capacity and availability of appropriate mortgage products. Central to these dimensions is the degree of support from local jurisdictions: **the ways that localities implement this law will have a significant impact on new homebuilding enabled by SB 9.** As designed, SB 9 allows jurisdictions to implement the law using their own objective design standards and limitations and allows for the imposition of additional restrictions outside of a broad baseline of requirements as laid out in the bill. These loose conditions have created a massive statewide laboratory of sorts, with over 500 local jurisdictions that each have an opportunity to implement the HOME Act in their own unique ways. In the cities we examined, no two ordinances were alike. In addition, homeowner associations are allowed to ban SB 9 lot splits—a practice outlawed for statewide ADU standards—thereby allowing some organizations at the most local level to further limit unit feasibility.

Figure 1. Senate Bill 9 Parcel Development Funnel (Total Numbers) from 2021 Turner Analysis



Source: 2021 Turner Center report on the potential impact of SB 9 on new housing supply by modeling the financial feasibility of new home construction.

The following analysis looks at how cities are implementing SB 9 differently and explores how these regulations might facilitate new home construction or hinder it. To better understand how each city's specific requirements might impact SB 9 uptake, **we examine 10 cities with SB 9 implementing ordinances**. The cities were selected based on size and geography to reflect different types of communities. A majority of cities in the Central Valley and Inland Empire have not adopted SB 9 ordinances at this time and, therefore, are not included in our analysis.

This analysis presents an opportunity to assess the different implementation strategies of different cities and to analyze how future state-mandated land use rules might be adopted locally. It is not intended to be a ranking, but rather an examination of how major statewide land use laws may be adopted later by local jurisdictions.

Background: State Law, Local Interpretation

SB 9 sets a baseline standard that all localities must follow with regard to the law's implementation. **The bill locks in certain standards, such as minimum building structure size allowed (800 sq. ft.) and lot size requirements (in a lot split, each new lot must be at least 1,200 sq. ft. in size or 40 percent of the existing lot size).** Local jurisdictions cannot pass standards that exceed a **4 ft. maximum rear and side setback**, which is the minimum distance between the edge of a property and the structure. For parking, localities may require one parking space per unit unless the lot is within 0.5 miles of a high-quality transit corridor, a major transit stop, or within one block of a car share vehicle. The law does not apply to homes in historic and landmark districts, very high fire hazard zones¹, flood zones, prime farmland, and environmentally-protected areas. The HOME Act also requires that the local review process for a SB 9 lot splits must move from discretionary review (i.e., subjective, case-by-case) to ministerial approval (i.e., objective, consistent application).

Outside of these requirements, local jurisdictions generally have significant discretion on the additional regulations that they can impose on SB 9 projects. While SB 9 does state that local requirements may not "physically preclude" the development of a duplex, in practice, localities could pass objective design

standards, affordability requirements, or use of land requirements that would result in projects which are technically eligible under the law but are rendered economically infeasible by the requirements.

[Click the link here to download the full table comparing SB 9 implementing ordinances in our 10 selected cities.](#)

Terner Center Sample of Local SB 9 Implementing Requirements

	Maximum Unit Size (sq. ft.)	Design Requirements	Side and Rear Setbacks	Parking	Development Impact Fees
State SB 9 Standards	Local discretion	Local discretion	4' maximum	1 parking unit except for 1/2 mile near major public transit or car share.	Local discretion
San Diego	Not listed, assume no maximum	Not listed	4' for multi-story buildings adjacent to residential. 0' for multistory buildings adjacent to non-residential and all single-story buildings.	1 parking unit except for near "transit priority area" or car share.	First 2 units are exempt. 3rd and 4th units pay scale development impact fees.
San José	Not listed, assume no maximum	Not listed	4' maximum	State standard	N/A
Martinez	850 sq. ft.	Must use similar exterior materials and design of a primary dwelling, including color tones, window types, door and window trims, roofing materials, and roof pitch.	4' maximum	State standard	N/A
Carlsbad	Not listed, assume no maximum	A new structure may be constructed in the same location and to the same dimensions as an existing structure, despite city setback requirements, provided the new structures meet building code safety standards and are sufficient to allow separate conveyance. The city shall waive the objective design standards if the applicant can show that the standards physically preclude the construction of either of the two units from being at least 800 sq. ft. in floor area.	4' minimum/maximum	State standard	N/A

Unit Design Requirements

We found **wide variation in the allowable size and height of SB 9 units**. Carlsbad does not have a height limit or maximum unit size listed. San José and San Diego have lenient height maximums of up to 30 ft. without a maximum unit size requirement. These limits track with general trends for single-family homes across the state: the **median height limit** for single-family homes that we observed in our California Residential Land Use Survey is 30 ft., whereas the median height for multifamily is 35 ft. On the other hand, Beverly Hills and Walnut Creek have a height restriction of 14 ft. Six out of ten cities in our analysis implemented height requirements under 20 ft. Moreover, many of these cities have made the maximum size for new units close to the minimum size required by the state law—800 sq. ft. Such requirements will almost certainly limit the number of lots that will be effectively eligible for new building under SB 9.

In addition to size and height, jurisdictions are also implementing other design requirements. For example, Temple City requires a Spanish colonial design and specifies the exact size and materials needed for the building. Dictating specific

allowable exterior materials and architectural designs can increase the cost for new units. It can also limit the use of more affordable construction methods like modular and prefabricated housing units.

Affordability Requirements

We found **some cities have imposed affordability requirements** that are likely to limit uptake of SB 9. In our analysis, the cities of Sonoma, Los Altos Hills, Temple City, and Beverly Hills require **deed-restricted affordable housing for HOME Act projects**. Additionally, two localities require deed-restricted affordable housing while also **requiring affordable impact fees** on these same projects. For example, Sonoma has an impact fee for SB 9 projects while also requiring that one of the units be affordable. Localities usually exempt affordable housing impact fees on affordable projects to help facilitate and reduce the cost of their construction.

Such requirements can be well-intended, but deed-restricted affordable housing requirements may make it challenging—or impossible—for projects to financially pencil without subsidies or offsets. As we have explained **in previous work**, underlying market conditions such as construction costs and rents play the largest role in determining project feasibility. Requiring affordability in certain projects without commensurate cost offsets can render development infeasible. These same principles apply to smaller developments like SB 9 lot splits, where the limited revenue and financing options created by mandatory deed-restrictions can severely limit where SB 9 projects can pencil out. Moreover, deed restrictions require technical expertise to navigate the regulatory requirements of affordable housing, creating another barrier to homeowner uptake.

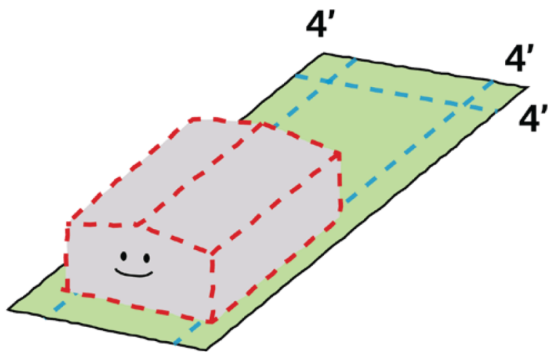
Use of Land Requirements

We also found that four out of ten cities in our sample require significant **easements**—a legal right for a person or entity to access a property owned by someone else for a limited and specific purpose—or other land uses that may significantly limit the uptake of SB 9 by spatially constraining what can be built.

One example of an additional land use constraint is the addition of setbacks that go beyond the requirements set by state law. Requirements at the state level

mean that SB 9 lot splits must have a maximum of 4 ft. setbacks at the rear and side of new properties, as illustrated in Figure 2. **Though there is no state requirement on front setbacks, some cities have implemented larger front setbacks.** For example, Los Altos Hills requires a 40 ft. front setback, which greatly limits parcel eligibility. High front setback requirements can be difficult to meet for SB 9 projects, particularly for smaller lots. As a point of reference, the median front setback according to our statewide survey is 20 ft. for single-family homes.

Figure 2. Side and Rear Setback of 4', the Maximum Allowed Under SB 9



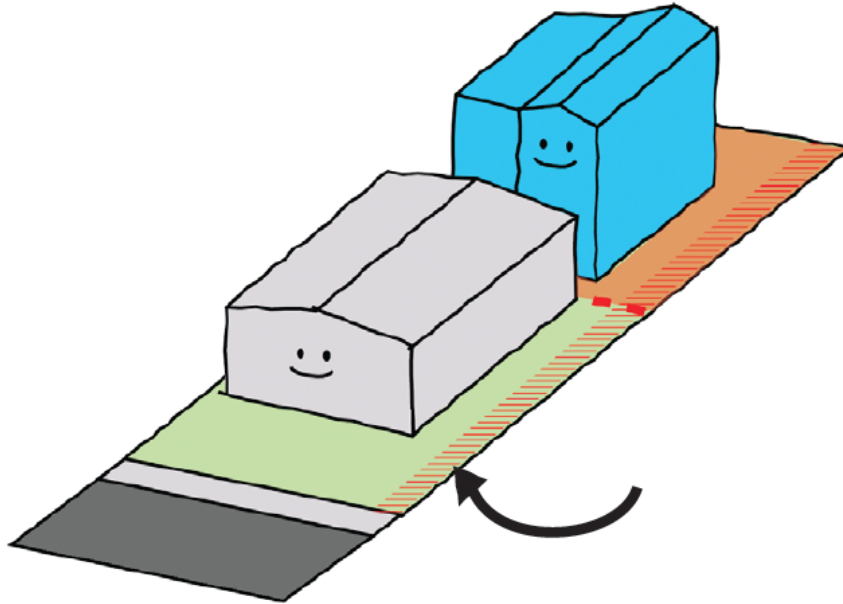
Source: Image courtesy of United Dwelling.

Limitations on the ability of homeowners to create a **flag lot** where a narrow driveway is placed on the side of two properties to allow an easement—or pedestrian or vehicular access—to the back property from the street are another set of practices that may reduce SB 9 uptake. When properties can be split in a way that results in one unit in the front and one in the back, a common and easy practice is to create a flag lot through the two properties, which allows the property owner to adhere to the easement and maximize the size of each lot.

However, some local requirements have banned flag lots or have required sizable easements that can be difficult to adhere to depending on the size and shape of the lot (illustrated below in Figure 3). Geometrically, requiring a sizable easement while banning a flag lot means the size of a property needed to adhere to these restrictions is quite substantial. Easements larger than necessary for a vehicle to drive in can also prevent development by making smaller lots

infeasible to build on. For example, San José's easement requirement of 12 ft. disqualifies parcels across the city from SB 9 compliance. By contrast, other cities either have large easement standards or do not have a stated policy in their SB 9 ordinance. Some cities, such as Sonoma and Beverly Hills, have banned flag lots altogether.

Figure 3. Flag Lot Created by Easement



Note: Infographic illustrates how a flag lot is created through an easement, with the arrow pointing to the created easement. Source: Image courtesy of United Dwelling

Parking requirements are another area where local ordinances vary greatly. For example, car-dependent Temple City has both eliminated off-street parking and restricted on-street overnight parking passes for residents of SB 9 units. Applicants are required to have their driveways removed and the curb-cuts removed and repaired. For SB 9 constructions, Los Altos Hills requires one uncovered parking space located a minimum of 40 ft. from the front parcel line and 30 ft. from the side and rear parcel lines. Such **parking requirements** can discourage development.

Open Space Requirements

Five out of ten cities included in our analysis, including Sonoma and Temple City, require open spaces or courtyards between SB 9 units. Temple City requires a courtyard of 125 sq. ft. or 25 percent of parcel space (whichever is less) between the SB 9 structures. Sonoma requires a 600 sq. ft. area per unit to not be occupied by structures, parking, or driveways and to be shared by both units. Additionally, landscaping requirements, such as those mandating mature trees and large hedges, add to development costs, leading to potentially fewer SB 9 units being financially feasible if they are built at all. Los Altos Hills, Temple City, Goleta, and Sonoma all have specific landscaping requirements. Sonoma requires at least three mature trees and ten shrubs to be planted. Los Altos Hills requires a hedge—sized at 15-gallon minimums and placed at 5 ft. intervals—to surround the property. Goleta’s ordinance asks for at least one 15-gallon size plant for every 5 linear ft. of the exterior walls or a 24-inch box plant for every 10 linear ft. In contrast, San Diego and Walnut Creek require a landscape design that adheres to its standards for single-family homes, requiring no additional requirements for SB 9 properties.

In summary, we found that among the ten cities, seven of them require objective design standards for SB 9 splits that have stricter requirements than for single-family homes or Accessory Dwelling Units. **SB 9 requires that local agencies modify or eliminate local standards on a project-by-project basis if objective standards would prevent an otherwise eligible lot from being split or prevent the construction of up to two units at least 800 sq. ft. in size.** Local objective design ordinances, which can be hard to adhere to and which can make it more challenging to build, can create a legal loophole that moves away from the intended ministerial approval and reverts the process of splitting a lot to a project-to-project local review standard.

Policy Recommendations

Challenges in state land use laws are not unique to SB 9. When the state first legalized ADUs statewide, unit design requirements, affordability requirements, and use of land requirements hindered their production for years. In California’s 2019 ADU legislative package, the state standardized development fees, permit timelines, unit sizes, and height to create a **lasting effect** on the housing market. A recent Turner Center **survey** on newly-constructed ADUs found that most units were available to those making less than 80 percent of the area median income (AMI). However, the overall affordability varies significantly by county. By implementing, in some cases, stricter or more expensive SB 9 standards than

would otherwise be required for ADUs, localities may be functionally precluding more housing that is affordable to people hoping to move into the area.

Currently, the California Department of Housing and Community Development (HCD) plans to [send letters](#) to 30 local jurisdictions requesting a plan to become more compliant with the intent of SB 9. The Attorney General has [threatened to sue](#) localities that outright oppose the new law, most notably in response to the [ordinances adopted by Woodside and Pasadena](#). These actions will likely help shift local policies. Our analysis suggests, however, that the law may need to be expanded upon in a manner similar to ADU laws.

While this analysis has demonstrated some of the challenges of making impactful changes to state housing laws, there are tools and policy changes at both the local and state levels that can help to ensure that SB 9 achieves its goals. With limited budgets and competing priorities, local governments may understandably be struggling to develop an implementing ordinance for a housing law that only became effective in January of this year. Localities have the option to adopt state law as-is without the pressure of implementing a local ordinance. For localities that want to ensure that SB 9 is able to achieve its full potential in catalyzing new housing in single-family neighborhoods, local jurisdictions and the state should take steps to properly implement with the intention of the law and to ensure that SB 9 developments will happen. HCD has released a [technical assistance fact sheet](#) to assist local governments with HOME Act implementation. The Association of Bay Area Governments provides local jurisdictions with [SB 9 templates](#) such as draft staff reports, PowerPoint presentations, overview graphics, architectural drawings, and [‘missing middle’ housing workshops](#).

Localities and the state should work to implement the following best practices to help increase parcel eligibility, coordinate municipal services, and help empower homeowners to utilize the full extent of the law, enabling SB 9 to more widely catalyze new housing.

1. Localities should provide residents with access to eligible parcel information, easy-to-read checklists, and clear information on project timelines, which would greatly assist homeowners in building a new unit or splitting a lot under HOME Act.
2. The state should begin to track SB 9 developments statewide through a system like the Annual Progress Report and introduce bill language to clarify local SB 9 implementation, similar to what has been done to ADU development.

3. Local jurisdictions may wish to empower homeowners and small developers by adopting best practices from ADUs and SB 9 adoption ordinance, including such successful policies and programs such as San José's [pre-approved housing designs](#) and [same-day permitting approvals](#).
4. Local jurisdictions could also explore directly financing some SB 9 projects to focus on affordability, as the city of Pasadena has done through their [ADU construction loan program](#). Oakland's nonprofit-driven [Keys to Equity](#) program provides a model for assisting low- to moderate-income homeowners with ADU construction as well.

Localities have the ability to ease the housing shortage and create more construction jobs by leaning into new land use laws, developing more community builders, and incubating nonprofit and for-profit small builder startups.

While this analysis is specific to California, it also offers instructive lessons for other states and communities around the country that are working to open up single-family-zoned communities to more housing types. It also highlights the challenges the Biden administration will face as it works to encourage communities around the country to [relax exclusionary land use and zoning requirements](#) through preferential scoring in economic and transportation funding programs as well as proposed [planning grants](#).

The extent to which SB 9 will impact housing production across the state is dependent on its effective implementation by local governments. By mandating requirements that hinder the feasibility of housing construction, localities may upend the law's intended ministerial review and force a reversion to a project-by-project one. Fortunately, state and regional governments are assisting localities with resources for implementation and **holding localities accountable for not administering the HOME Act**. Local governments should rely on these resources and best practices to ensure that the housing production potential of the law is realized.

Acknowledgments

We would like to express our sincerest thanks to everyone who contributed to and reviewed this analysis. We are grateful to the San Francisco Foundation for their support on Turner Center's HOME Act local implementation work.

This research does not represent the institutional views of UC Berkeley or of Terner Center’s funders. Funders do not determine research findings or recommendations in Terner Center’s research and policy reports.

Footnotes

1. There are exceptions to when SB 9 would apply to high fire zones, such as when units are built to higher development standards or local jurisdictions independently decide to allow SB 9 projects in these areas.

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Turner Center Sample of Local SB 9 Implementing Requirements

	Maximum Unit Size (sq. ft.)	Design Requirements	Side and Rear Setbacks	Parking	Development Impact Fees
State SB 9 Standards	Local discretion	Local discretion	4' maximum	1 parking unit except for 1/2 mile near major public transit or car share.	Local discretion
San Diego	Not listed, assume no maximum	Not listed	4' for multi-story buildings adjacent to residential. 0' for multistory buildings adjacent to non-residential and all single-story buildings.	1 parking unit except for near "transit priority area" or car share.	First 2 units are exempt. 3rd and 4th units pay scale development impact fees.
San José	Not listed, assume no maximum	Not listed	4' maximum	State standard	N/A
Martinez	850 sq. ft.	Must use similar exterior materials and design of a primary dwelling, including color tones, window types, door and window trims, roofing materials, and roof pitch.	4' maximum	State standard	N/A
Carlsbad	Not listed, assume no maximum	A new structure may be constructed in the same location and to the same dimensions as an existing structure, despite city setback requirements, provided the new structures meet building code safety standards and are sufficient to allow separate conveyance. The city shall waive the objective design standards if the applicant can show that the standards physically preclude the construction of either of the two units from being at least 800 sq. ft. in floor area.	4' minimum/maximum	State standard	N/A
Sonoma	Must be the maximum floor area ratio of the base zoning or 1600 sq. ft. for both units.	Design standards for lot lines, parcel design, map requirements, and utilities and sewage. No new ADUs or JADUs on the lots. More requirements on linked source document.	4' maximum, unless double frontage	1 parking unit except for 1/2 mile near major public transit or car share. No tandem parking.	Yes
Walnut Creek	800 sq. ft., not including garage or carport	A 5-ft. minimum sill height for second-story windows located within 10 ft. of a side or rear property line, an architecturally compatible design for garage conversions, and that the two dwelling units on the same lot share the same architectural features.	4' maximum	State standard	N/A
Goleta	800 sq. ft.	Step back requirement for 2 story buildings on small lots. No septic tanks.	4' maximum	State standard	N/A
Beverly Hills	800 sq. ft.	Not listed	4' maximum	State standard, but not within a front setback.	N/A
Temple City	800 sq. ft.	No vaulted ceilings allowed. New construction must match architectural style of main dwelling including but not limited to roof pitch, window size, proportion of window to wall, direction window opening, exterior building materials, and real stone. Must be Spanish Colonial Revival style of architecture and must also conform to additional requirements in the ordinance.	4' maximum	Prohibits residents of SB 9 lot splits from parking on-site or overnight on city streets. Prior to issuance of building permit, applicant must obtain encroachment permit to remove existing driveway. Driveway must be removed before building permits or certificate of occupancy can be approved.	Conducting yearlong study
Los Altos Hills	800 sq. ft.	30-ft. side and rear yard setbacks with a maximum floor area up to 1,600 sq. ft.	4' maximum	1 uncovered parking space, located a minimum of 40 ft. from the front parcel line and 30 ft. from the side and rear parcel lines	Subject to all fees

Turner Center Sample of Local SB 9 Implementing Requirements (Continued)

	Affordability Requirement	Landscape/ Exterior Requirements	Height Standards/ Front Setbacks	Easements	Other
<u>State SB 9 Standards</u>	Local discretion	Local discretion	Local discretion	Local discretion	Local discretion
<u>San Diego</u>	No	1 tree for every 5,000 sq. ft. of lot area. Compliance with street tree regulations if more than 2 units are constructed. Similar to 1 tree per every 30 ft. facing the street.	Height limit of 30 ft. and front setback of 15 ft.	N/A	N/A
<u>San José</u>	No	No	30 ft. maximum height (2 stories), unless within 20 ft. of the rearmost property then maximum of 20 ft.	Split of 30 ft. between 2 lots, 12 ft. minimum for one side	N/A
<u>Martinez</u>	No	No	Height limit of 16 ft.	N/A	N/A
<u>Carlsbad</u>	No	No more than 2 new parcels of approximately equal lot size can be created.	N/A	Each lot shall provide access (frontage or access easement) to the public right-of-way per city standards, which is a minimum of 20 ft. in width.	Must have different owners for lot split. Standards in coastal zone must be approved by commission.
<u>Sonoma</u>	Yes, under 80 percent AMI for renters and under 120 percent AMI for homeowners.	Street trees must be planted in city's right-of-way, and each parcel must have at least 3 mature trees and 10 shrubs. No flag lots and 600 sq. ft. area per unit must not be occupied by structures, parking, or driveways to be shared by both units.	Height limit of 18 ft., but exception up to 25 ft. (requiring planning director approval) possible if the height limit precludes SB 9 unit construction.	Easement of 12–16 ft., car access easement of minimum 20 ft. and parking is required for lot split.	N/A
<u>Walnut Creek</u>	No	The removal, or construction within the dripline, of a highly protected tree is prohibited. This regulation is a more lenient one than for single-family homes, where homeowners or residents cannot remove any tree.	Height limit of 16 ft., unless such a limit would physically preclude the SB 9 units from being at least 800 sq. ft. in floor area.	N/A	N/A
<u>Goleta</u>	No	No window or door of a principal dwelling that is constructed on the lot may have a direct line of sight to—or be within 10 ft. of—an adjoining residential property without screening. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line. At least one 15-gallon size plant shall be provided for every 5 linear ft. of exterior wall. Alternatively, at least one 24-inch box size plant shall be provided for every 10 linear ft. of exterior wall.	Height limits: Lots > 2,000 sq. ft.: 16 ft. Lots < 2,000 sq. ft.: 25 ft.	The owner must enter into an easement agreement with each public-service provider, as needed, to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots. On-site wastewater treatment systems are not allowed.	Must be owned by natural persons or living trusts, no common interest developments.
<u>Beverly Hills</u>	Yes, unit should be rented at maximum rate for someone earning 80 percent AMI.	No flag lots. Any unit other than the frontmost unit shall be completely screened by either other unit(s) on the lot or landscaping. The two resulting lots shall be approximately equal, and in no event less than 48 percent and more than 52 percent of the lot area of the original parcel. No right-of-way dedications shall be imposed upon urban lot split projects.	Height limit of 14 ft., separate entrances, and front setback of 10 ft.	N/A	N/A
<u>Temple City</u>	30 year deed for low-income or very low-income. Low-income is under 50 percent AMI in LA/Long Beach. Yearly check of tenant tax returns with the city to ensure eligibility.	A courtyard of 125 sq. ft. or 25 percent of parcel (whichever less) is required and must be surrounded by structures on at least 2 sides. It is illegal to remove mature trees or to remove 30 percent of vegetation.	Height limit of 18 ft., unless part of existing structure or needed to fit floor area of 800 sq. ft.	Easement for front to rear parcel, access to right-of-way for public services and utility maintenance.	LEED Platinum for new SB 9 unit. Only one bedroom can be rented per urban dwelling.
<u>Los Altos Hills</u>	Deed restrictions for all new units restricted to households at low- and very low-income levels according to Santa Clara County AMI.	A hedge at a minimum of 15-gallon size plants at 5 ft. intervals is required. A 25-ft.-wide panhandle for a flag lot or an ingress/egress easement shall be provided for all new parcels that do not have direct frontage. Driveway access to the new parcels shall be shared unless the new driveways are a minimum of 100 ft. apart. Lot split approximately perpendicular to the longest contiguous property line. Adding a patio, deck, other hardscape automatically sets town's 40 ft. front yard and 30 ft. side yard setbacks.	Height limit of 16 ft. and front setback of 40 ft.	Easement minimum of 25 ft. for a flag lot that does not have direct frontage for public or private access.	N/A

Adriana Jaramishian

To: Matt Bator
Subject: RE: Item #1–SB 9 Ordinance, Red Dot

From: Dolores Jamison <doloresdj@gmail.com>
Sent: Monday, May 8, 2023 11:52 AM
To: Matt Bator <MBator@delmar.ca.us>
Cc: Philip Posner-PC <pposnerco@yahoo.com>; Claire McGreal <clairemcg@roadrunner.com>; John Farrell <jgfarrell22@gmail.com>; s_galen@bakkerandson.com
Subject: Item #1–SB 9 Ordinance, Red Dot

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May 7, 2023

City of Del Mar
Planning Commission
May 9 Agenda — Red Dot, Item #1

Attention: Matt Bator & Planning Commission Members:

Regarding Del Mar’s draft ordinance for implementation of SB 9, I am puzzled as to why the proposed ordinance is so loose in regards to maximum FAR, setbacks, minimum lot size, maximum lot coverage, and grading, in contrast to the SB 9 ordinances adopted by other California coastal cities such as Santa Barbara and Laguna Beach. Given that this bill represents a full-on attack on our neighborhood character, wouldn’t it behoove us to strengthen the proposed ordinance so that it is more robust in asserting our development standards?

Given that Del Mar has a certified Local Coastal Plan and is completely within the Coastal Zone, we are held to higher development standards and have more options for preserving our unique character. We should be taking advantage of this. Santa Barbara’s SB 9 ordinance, for example, applies stricter standards to property in the Coastal Zone. The standards applied in Del Mar’s draft ordinance, however, are less restrictive than the standards required by Santa Barbara outside of their Coastal Zone.

Del Mar’s draft ordinance also does not require that all proposed residential designs (including all exterior finishes, colors, building materials, and other architectural features) be compatible with the design of an existing residential unit. If two units are proposed, they should be compatible with each other. This requirement should also be added to our ADU ordinance, at least when the ADU is visible from the street.

There is also the potential to lose even more trees because of SB 9. At a time when our tree canopy has continued to decline and many trees have been lost due to the construction of new homes and ADU’s, we should be doing all we can to mitigate tree loss. Other California cities are doing this, including Laguna Beach and Saratoga. Laguna Beach requires that if trees larger than six inches in diameter must be removed to construct an SB 9 unit, the trees must be replaced at a two to one ratio. Saratoga requires that if any protected trees are removed to build an SB 9 unit, an arborist report, a tree preservation plan, and a tree security deposit must accompany the application. The planting of new trees equal to the value of removed trees must be completed before occupancy can take place. In addition, the SB 9 ordinance should not be applicable to parcels that have covenants and special landscape conditions for protected trees.

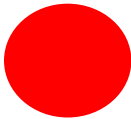
While the goal of this bill is to produce more affordable housing, our proposed ordinance—unlike Santa Barbara’s ordinance—does not require that SB 9 units be affordable. Given the high cost of land in Del Mar and no affordable housing requirement, it is extremely unlikely that even one unit of affordable housing will be produced. The City should require that SB 9 units meet affordability standards. This requirement should be added to the ordinance as soon as possible.

I would strongly urge the Planning Commission to safeguard the integrity of our neighborhoods and strengthen the proposed ordinance so that it better reflects our neighborhood standards. We should take advantage of the legal tools at our disposal to preserve our neighborhood character, as other California municipalities have done.

Thank you for your attention and consideration.

Sincerely,

Dolores Davies Jamison
1209 Crest Road
Del Mar



From: Planning Mail Box
Sent: Tuesday, May 9, 2023 11:33 AM
To: Adriana Jaramishian; Matt Bator
Subject: FW: Red dot for item 1 of Planning Commission meeting

From: deftos <mdeftos@gmail.com>
Sent: Tuesday, May 9, 2023 11:26 AM
To: Planning Mail Box <Planning@delmar.ca.us>
Subject: Red dot for item 1 of Planning Commission meeting

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Del Mar Planning Commission,

I support the red dot from Jamison and adoption of objective standards that protect the interest of property owners to the greatest extent possible within the constraints imposed by SB 9. Towards that goal, there should be more objective standards to preserve the natural resources of the City, including:

- Scenic views and visual qualities.
- Native species, including Torrey pines.

- Geologic features such as bluffs, slopes and canyons.

Of note, the Coastal Act specifically recognizes “scenic and visual qualities” as a natural resource to protect (Cal. Pub. Resources Code § 30251).

The draft ordinance appears to provide little to no protection for existing private or public view corridors. Under the proposed ordinance, SB 9 development could completely obstruct an existing private or public view corridor and there would be no means for the City or impacted property owners to prevent this. In addition, landscaping associated with SB 9 development could similarly obstruct existing private or public view corridors as it matures and impacted property owners would be required to attempt to pursue view restoration through the arduous, contentious and expensive TSVS Ordinance. To preserve the natural resource of scenic views, the City could include as an objective standard for SB 9 development that “no existing public or private view corridor can be obstructed to any degree by a dwelling developed pursuant to SB 9” and that “landscaping shall be limited to shrubs and trees that will not obstruct existing private of public view corridors on maturity.”

In addition, the draft ordinance appears to provide little protection for Torrey pines. The proposed ordinance prohibits SB 9 dwellings to be constructed under the dripline of Torrey pines. However, Torrey pines can be aggressively trimmed to shrink the dripline. More importantly, the draft ordinance proposes relying on DMMC 23.50 (Trees Ordinance) to regulate removal of Torrey pines requested as part of SB 9 development. But removal of Torrey pines for lot development is discretionary under DMMC 23.50, with the discretion vested in the Design

Review Board (or the Director of Planning and Community Development in this case?). In the past, exercise of this discretion by the Design Review Board has resulted in removal of numerous Torrey pines in the City. Moreover, SB 9 does not allow discretionary decision making in the approval or denial of an SB 9 development application. Therefore, any denial of a request to remove a Torrey pine for SB 9 development could be challenged as disallowed discretionary decision-making. Instead, if this Planning Commission wants to make every effort to preserve Torrey pines, it could recommend an objective development standard that prohibits removal of a Torrey pine for SB 9 development and prohibits SB 9 development within 12 feet of a Torrey pine. If an exception to this objective standard is necessary to allow any SB 9 dwelling to be constructed, then the ordinance could require replanting on site of a replacement Torrey pine with a requirement that it be maintained such that it did not obstruct existing view corridors (or block sunlight to neighbor's solar panels).

The ordinance does extend the protection of bluffs, slopes and canyons that currently exists in the BSC Overlay Zone to SB 9 development throughout the City by restricting development close to substantially steep slopes. However, the inclusion of "when feasible" seems to unnecessarily weaken this protection. All objective standards are already "when feasible" since SB 9 does not allow objective standards to prohibit SB 9 development.

Excluding SB 9 development from various overlay zones based on an assertion that such development would necessarily violate the City's LCP seems questionable to me. It is my understanding that ADUs are allowed in the overlay zones, so it is difficult to understand why an ADU would not violate the Coastal Act while an SB 9 dwelling necessarily would. If a proposed SB 9 dwelling is consistent with the BSC Overlay Zone Ordinance, how would it violate the Coastal Act? All of Del Mar is in the coastal zone and Del Mar's LCP includes both base zone ordinances and overlay zone ordinances. If the City categorically excludes SB 9 development, for example from the BSC overlay zone, it might open itself to complaints of "regulatory discrimination." For example, a property owner in the BSC zone might apply for a SB 9 development permit that is compliant with objective standards of the City's SB 9 implementation ordinance and the specific requirement of the BSC Overlay Zone and challenge the City if this were not ministerially approved. Conversely, a property owner negatively impacted by adjacent SB 9 development might be resentful that SB 9 development was allowed in their neighborhood but not in some other neighborhoods in the City or even on their property. Instead of categorically excluding SB 9 development in the various overlay zones, the City could make an explicit statement that such development must be consistent with the City's LCP implementation ordinances. Of note, the Coastal Commission has stated that "Local Coastal Program (LCP) provisions continue to apply but, in most places, will need to be updated to conform with SB 9 to the greatest extent possible while still complying with the Coastal Act."

<https://documents.coastal.ca.gov/assets/rflg/SB9-Memo.pdf>

The City's objective standards cannot preclude SB 9 development on a parcel, but they can make it less attractive or affordable. When the City's objective standards preclude SB 9 development on a parcel, some of the restricting objective standards must be removed for that parcel. It might be possible for the City to exert some discretion in SB 9 development by adopting relatively stringent objective standards and then use discretion in determining which of the objective standards are removed to allow SB 9 development when necessary.

Thanks for your consideration,
Michael Deftos



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Michael Luna, Special Projects & Programs Manager
Assistant City Manager, Clem Brown
Via Ashley Jones, City Manager

DATE: June 5, 2023

SUBJECT: Building Electrification Ordinance Update & Proposed Sustainability
Advisory Committee Work Plan Amendment

REQUESTED ACTION/RECOMMENDATION:

Staff recommends that City Council put the development of a building electrification ordinance on hold until there is more clarity on the impacts of a recent State Court ruling regarding building electrification; and authorize staff to work with the Sustainability Advisory Committee (SAC) on the development of a Balloon Ban Ordinance in the interim.

BACKGROUND:

At the City Council Goal Setting Workshop on February 13, 2023, the City Council approved the City's work plan for FY 2023-24 & FY 2024-25, which included the development of a building electrification ordinance as a Tier 2 work plan item to begin in May 2023.

On April 17, 2023, the U.S. Court of Appeals for the Ninth Circuit issued a decision in *California Restaurant Association v. City of Berkeley*. The ruling reversed a district court's decision to dismiss an action by the California Restaurant Association claiming the federal Energy Policy and Conservation Act (42 U.S.C. § 6297(c)) ("EPCA") preempts a City of Berkeley ordinance prohibiting the installation of natural gas piping in newly constructed buildings. The three-judge panel held that EPCA expressly preempts State and local regulations concerning the energy use of many natural gas appliances, including those used in household and restaurant kitchens.

The Berkeley ordinance prohibits natural gas piping into newly constructed buildings, which the Ninth Circuit held essentially renders gas appliances useless in those buildings. The Ninth Circuit found that EPCA preempts local building codes regulating natural gas use by covered products, and the Berkeley ordinance prevented those covered products from using natural gas.

City Council Action:

DISCUSSION/ANALYSIS:

The ruling in the Berkeley case is relevant because staff is in the preliminary phases of developing an electrification ordinance for the City of Del Mar. The direction from City Council during its February 2023 goals and priorities workshop predates the recent decision by the U.S. Ninth Circuit Court of Appeals in *California Restaurant Association v. City of Berkeley*.

In discussions with the State and neighboring San Diego North County cities, staff has learned that other local jurisdictions have postponed the development and adoption of their proposed electrification ordinances based on the recent ruling. Staff is not aware of any jurisdiction that has repealed its ordinance since the Berkeley decision was issued. Although the State does yet not know how this decision will impact local agencies, the State is working closely with interested agencies to evaluate options that would allow local jurisdictions to adopt a building electrification ordinance in compliance with EPCA. As indicated in a recent overview and update on this case provided by the City Attorney, staff and the City Attorney's office will continue to monitor and report back as new information becomes available.

Given that staff and the City Attorney are waiting to hear whether the City of Berkeley intends to appeal the Ninth Circuit ruling, and to receive the State's formal response on the impacts of the ruling and recommendation to local jurisdictions, staff recommends putting the development of a building electrification ordinance for the City of Del Mar on hold. In the meantime, staff recommends that the City Council consider adding the balloon ban ordinance to the SAC work plan (Attachment A) to be worked on by staff in conjunction with the SAC until such time that the City has more certainty with regard to next steps and timing for development of a building electrification ordinance.

ATTACHMENTS:

Attachment A – Sustainability Advisory Committee (SAC) FY2023-2024 Work Plan



CITY OF DEL MAR

SUSTAINABILITY ADVISORY COMMITTEE FY 2023-2024 COUNCIL APPROVED WORK PLAN

The Sustainability Advisory Committee, in coordination with staff and Council liaisons, prepared the following proposed FY 2023-2024 Work Plan, which was approved by the committee at their January 30, 2023, meeting and approved by City Council on March 20, 2023.

Item #1: Building Electrification Ordinance (BE)

- **Description:** Work with staff to develop and draft a BE ordinance for approval by City Council.
- **Subcommittee:** Building Electrification Subcommittee
- **Resources Requested:** Pro bono consultants have been identified who will work with staff to draft the ordinance based on the Encinitas model. Funding and staff time would be required to work with the committee to draft a BE ordinance. This would include consulting with the City Attorney, consultants and community members via an outreach program.
- **Additional Information:** SAC can continue to advise regarding the drafting of the BE ordinance. SAC can continue to do outreach/education about BE to the community and to stakeholders. This includes writing articles for Del Mar Weekly and other community publications as well as distribute handouts educating the public on advantages of constructing all-electric buildings.
- **Priority:** High

Item #2: Outreach

- **Description:** SAC will provide outreach as mentioned above for building electrification and organics recycling, in consultation with staff and our Council Liaisons. Work with City staff to keep the City's Go Green Website up to date. Update residents of any rebates for energy efficiency, electric appliances, etc. either through SAGE or through state and local funding mechanisms, including IRA funding. Provide periodic topics/articles for inclusion in Del Mar Weekly and existing communication tools.
- **Subcommittee:** Outreach Subcommittee
- **Resources Requested:** Staff time to assist with the development of a regular schedule of postings, with review and publishing across different mediums (print & digital) using the City's existing communication tools. Funding for live-streaming/broadcast of work plan items.
- **Additional Information:** N/A
- **Priority:** High

Item #3: Plastics Reduction & Pollution

- **Description:** SAC will review and make recommendations on city actions to further reduce the use, consumption, and disposal of plastics, including littering in public spaces, parks and beaches.
- **Subcommittee:** Plastics/ Zero Waste Subcommittee
- **Resources Requested:** None.

- **Additional Information:** SAC recommends that staff adopt the SB ordinance wording.
- **Priority:** Medium

Item #4: Solid, Organics, Recycling Waste

- **Description:** SAC will assist with community outreach to help the community adjust to the new organic recycling requirements. SAC will work with staff to be sure that multifamily property renters have adequate access to organic recycling, and to information regarding paper, plastic and metal recycling. Add “trash talk” to Del Mar Weekly as well as other periodicals as needed as part of community outreach. We have already ascertained that EDCO does not provide organic recycling or other recycling information to renters, but only to multifamily property owners who have not been giving the information to tenants.
- **Subcommittee:** Plastics/ Zero Waste Subcommittee
- **Resources Requested:** Staff time would be required to work in conjunction with the City’s solid waste provider EDCO. Staff time to publish material on behalf of the SAC in public facing mediums.
- **Additional Information:** N/A
- **Priority:** Medium

Item #5: Draft Updated Resolution Addressing Del Mar’s Commitment to do its Part to Address the Climate Crisis

- **Description:** Draft updated Resolution addressing Del Mar’s commitment to do its part to address the climate crisis and share it widely with our state, regional, local, and federal officials.
- **Subcommittee:** N/A
- **Resources Requested:** None.
- **Additional Information:** N/A
- **Priority:** Medium

Item #6: Helium Balloon Ban Ordinance

Description: Work with staff to develop and draft a helium balloon ban ordinance for approval by City Council.

Subcommittee: Plastics/ Zero Waste Subcommittee

Resources Requested: Funding & staff time would be required to work with the committee to draft ordinance. This would include costs for consulting with the City Attorney to review the ordinance.

Additional Information: SAC to serve in an advisory capacity to provide feedback to staff on draft ordinance prior to recommending to City Council.

Priority: High