



City of Del Mar Agenda Report

TO: Honorable Mayor and City Council Members

FROM: Ashley Jones, Administrative Services Director/City Clerk
Joseph Smith, Planning & Community Development Director
Richard Romero, Assistant City Attorney
Via CJ Johnson, City Manager

DATE: January 11, 2021

SUBJECT: Acceptance of Certification of Referendum Against City Council Ordinance 973 and Required Actions

REQUESTED ACTION/RECOMMENDATION:

It is recommended that the City Council:

- 1) Accept the Certificate of Sufficiency issued by the City Clerk (Attachment A) regarding the referendum petition entitled "Referendum Against an Ordinance Passed by the City of Del Mar City Council - Ordinance No. 973" (Referendum); and
- 2) Consider one of the following actions:
 - a. Repeal Ordinance 973 in its entirety;
 - b. Submit the Referendum to the voters for consideration at either the next regular municipal election (November 2022) or at a special election, to be held not less than 88 days after the order of the City Council, and direct staff to come back at the next meeting of the City Council with the necessary resolutions; or
 - c. Discuss and direct staff to return with additional information, as deemed necessary by the City Council, related to the options provided above at a future meeting.

DISCUSSION/ANALYSIS:

On November 18, 2020, resident and Del Mar registered voter, Arnold Wiesel, submitted a referendum (Attachment B) to repeal the City Council's adoption of Ordinance 973, which occurred on October 19, 2020. After staff conducted an initial prima facie review of the Referendum, it was submitted to the County of San Diego Registrar of Voters (ROV) to review and determine if the Referendum contained the required 345 qualified signatures, which represents 10% of the registered voters in Del Mar, in order to be deemed sufficient. On

City Council Action:

December 15, 2020, the ROV sent a Certification Letter to the City Clerk confirming that the Referendum contained the required 345 signatures (Exhibit A to Attachment A).

According to California Election Code Sections 9240 and 9241, now that the Referendum has been deemed sufficient, the City Council (Council) must either repeal Ordinance 973 in its entirety; or submit Ordinance 973 to the voters for consideration at either the next regular municipal election, which will occur for Del Mar in November 2022, or at a special election, to be held not less than 88 days after the order of the City Council.

Unlike ballot measures, the California Elections Code does not provide a specific timeframe within which the Council must choose one of the two options described above. However, the City is expected to act reasonably and in good faith. If the Council decides to submit the Referendum for voter consideration, the necessary resolutions must be adopted and submitted to the County Registrar of Voters no later than 88 days prior to the election. The Ordinance will remain stayed until such time it is repealed by the Council or considered by the electorate.

The cost to include the Referendum on the ballot for consideration as part of the City's next general municipal election or as a special election during a statewide primary (such as was done with Measure G) would cost approximately \$7,000-\$10,000. If the Council were to elect to hold a standalone special election for the electorate to consider the Referendum, it would be very costly. Although exact costs are not known at this time, it is estimated that a standalone election could cost \$25,000 or more. The cost of any election related to the Referendum would be the responsibility of the City, not the Referendum proponents.

Ordinance 973

The Referendum seeks to repeal Ordinance 973, which was adopted by the Council on October 19, 2020. Ordinance 973 is related to the implementation of the City's 5th Cycle Housing Element Program 2E, and specifically amends the City's certified Local Coastal Program (LCP) and Zoning ordinance.

Program 2E (Program) is a key strategy in the City's 5th Cycle Housing Element to establish "adequate sites" of sufficient density per State Housing law and authorizes residential use at a density of 20 dwelling units per acre (du/ac) in the City's North Commercial zone. This Program is required in order to support the potential development of multiple dwelling housing that includes units affordable to lower income households.

The 5th Cycle Housing Element is the City's current Housing Element, which runs through April 15, 2021, and the City is obligated by the State to implement each of the action programs included within the document, especially programs designed to create adequate sites and produce housing units in order to meet the City's 5th Cycle Regional Housing Needs Assessment (RHNA). According to the certified 5th Cycle Housing Element, Program 2E was required to be completed by April 2016, three years following the City's Housing Element certification in April 2013.

The Housing Element is a State-mandated policy document that is a part of the Del Mar Community Plan, which is the General Plan for the City. It serves as the City's policy guidance document for how the City will implement State-mandated housing programs and policies,

institute the community's housing goals, and address the City's assigned share of housing in the San Diego region. A copy of the 5th Cycle Housing Element can be found here: www.delmar.ca.us/DocumentCenter/View/257/Housing-Element---2013---2021?bidId=.

On October 19, 2020, the Council adopted Ordinance 973 to implement Program 2E via amendments to the LCP and Zoning ordinance. However, the Council was unable to gain the required 4/5 vote to amend the Community Plan's North Commercial land use designation at that meeting. In order for Program 2E to be completed, amendments to the LCP, Zoning ordinance, and Community Plan must be locally adopted. Though nearly five years overdue, the Council is still expected by the State Department of Housing and Community Development (HCD) to complete the remaining action on Program 2E and amend the Community Plan before the 5th Cycle housing cycle ends on April 15, 2021, or risk penalties. To date, Program 2E remains incomplete.

HCD Enforcement

On September 30, 2020, prior to the adoption of Ordinance 973, the City received an enforcement letter from HCD putting the City on notice that its 5th Cycle Housing Element is at risk of being decertified and that referral to the California Attorney General is pending. The letter further provides HCD's written findings of the City's existing status in violation of State Housing law and gives reference to an earlier letter to the City dated July 31, 2020, stating that the City is out of compliance with State Housing law (www.delmar.ca.us/DocumentCenter/View/7215/HCD-Enforcement-Letter-9302020). Additional communications from HCD received in July 2020 can be found here: www.delmar.ca.us/DocumentCenter/View/7216/HCD-Letter-7312020.

On October 5, 2020, the Council issued a response to HCD's enforcement letter identifying the City's plan to cure its non-compliance and avoid further enforcement actions (www.delmar.ca.us/DocumentCenter/View/7263/City-Response-Letter-to-HCD-Enforcement-Letter-10-20-2020-PDF). One of the steps it would take toward gaining compliance would be local consideration of the remaining Program 2E action (Community Plan amendment) prior to the April 15, 2021, deadline. The City Council's response also outlined actions it had completed including the adoption of Ordinance 973 to implement the LCP and Zoning ordinance actions for Program 2E. On December 4, 2020, HCD confirmed that it accepted the City's response and would be closely monitoring the City's progress (www.delmar.ca.us/DocumentCenter/View/7369/HCD-response-to-Del-Mar-Response-12-4-20-PDF).

As has been discussed at length in prior Council meetings, including during the 6th Cycle Housing Element Update (HEU) hearing on October 5, 2020 and the 6th Cycle HEU informational update on December 14, 2020, the City currently does not have any "adequate sites" at sufficient density or any affordable housing units available for rent to lower income households. Further, in past meetings staff has explained that completing Program 2E is critical because it:

- 1) Preserves local control over 6th Cycle land use decisions in the North Commercial zone;
- 2) Avoids penalties/fines imposed by the State and/or private legal challenges; and

- 3) When timely completed together with 5th Cycle Program 2G (rezone of two vacant parcels referred to as “Watermark”) before April 15, 2021, the City retains certification of its 5th Cycle Housing Element.

Staff has further explained that in the event the 5th Cycle Housing Element is “decertified” as a result of not completing these remaining housing programs, the City also risks:

- 1) Referral to the Attorney General’s office;
- 2) More frequent housing cycles (i.e., every four years in lieu of eight years) and increased costs associated with the increased frequency;
- 3) Difficulty in obtaining state and regional grants to facilitate housing production (e.g., Fairgrounds); and
- 4) Inability to timely gain certification of the City’s 6th Cycle HEU due to the significant gap in strategies for adequate zoning and housing production that will remain if the planned adequate sites for 32 affordable units in the North Commercial zone can no longer be relied upon for the 6th Cycle.

As discussed on December 4, 2020, HCD has accepted the City’s plan to take steps toward compliance with its 5th Cycle housing obligations, including consideration of the Community Plan Amendment action needed to implement Program 2E. Based on HCD’s response, staff believes that if the Council completes its remaining local actions on Programs 2E (as well as Program 2G affecting the vacant “Watermark” parcels) by April 15, 2021, its 5th Cycle Housing Element will remain certified, referral to the Attorney General would not occur, more local control over land use decisions in the 6th Cycle would occur, and the City would have a greater chance of success for 6th Cycle certification since the draft 6th Cycle HEU relies upon completed 5th Cycle programs – a key component of which includes a completed NC zone allowing residential at 20 du/ac.

The City’s 6th Cycle HEU, as locally approved on October 5, 2020, demonstrates to HCD, per State Housing law, how the City is planning to realistically and feasibly accommodate at least 175 total housing units, including 113 affordable units through implementation of diversified housing programs for the 6th Cycle planning period from 2021-2029. As part of its diversified strategy, the City plans to build upon its 5th Cycle programs by creating new housing opportunities along the City’s main commercial corridor – Professional Commercial in the south, Central Commercial in the Village Center, and North Commercial to the north. This places new housing opportunities in the center of Del Mar and creates adequate sites at sufficient density to meet the 6th Cycle RHNA obligation per State Housing law.

Of the 113 affordable units to be provided, the City is relying upon 32 lower income affordable units (154 total units) to be developed in the North Commercial zone during the 6th Cycle planning period from 2021-2029. Opportunities for the remaining units are spread across various other areas including 51 affordable units at the Fairgrounds (North/South Bluffs as contingency); 8 affordable units in the Professional Commercial zone, Central Commercial zone, and 941 CDM Specific Plan zone; 15 affordable units in residential zones via deed-restricted Accessory Dwelling Units (ADUs); and seven affordable units at two City-owned vacant sites on 10th Street and 28th Street.

Impacts of Repealing Ordinance 973

As stated above, the draft 6th Cycle HEU in process relies upon the City timely completing its 5th Cycle Programs 2E and 2G. However, the Referendum seeks to reverse two of three necessary actions to complete 5th Cycle Program 2E – amendments to the City’s certified LCP and Zoning ordinance relating to housing development potential in North Commercial. In the event that the Referendum impedes the City’s ability to implement its required 5th Cycle Housing Element Programs and approved 6th Cycle HEU housing strategy in process – either by repealing Ordinance 973 by a vote of the Council or the electorate, or through the Council’s denial of the forthcoming Community Plan amendment (consideration is anticipated for the February 16, 2021 Council hearing) – this would be a signal to HCD to begin its enforcement action procedures as the 5th Cycle Housing Element (currently out of compliance with State Housing law) would not be brought into compliance before the end of the 5th housing cycle on April 15, 2021.

As such, the City would be subject to additional requirements by HCD including, but not limited to, the following:

- 1) The City should anticipate further loss of local control over 6th Cycle land use decisions, likely targeted in the North Commercial zone, by the added requirement of a “by-right” residential rezone program on selected site(s) that allow a density of 20-25 du/ac. This program would provide for the unaccommodated 5th Cycle RHNA need for lower income affordable units (that was not accommodated by Program 2E implementation). Local action on the program would need to be completed within one year following 6th Cycle certification (i.e., by April 2022).

HCD has the authority to require this program under Government Code §65583.2(h) and (i) when a City fails to accommodate its unaccommodated need from a prior housing cycle. The City has already experienced this type of penalty when it failed to accommodate its 4th Cycle housing need through adequate zoning during 2005-2010. As a result, this penalty was added to the City’s 5th Cycle Housing Element as Program 2G (rezone of two vacant sites referred to as “Watermark” for by-right residential development of 20-25 du/ac).

- 2) The City may also be obligated to process additional rezone/upzone programs that net out an equivalent replacement of adequate sites with sufficient density (allowing at least 20 du/ac) that realistically and feasibly could provide for at least 32 lower income affordable units during 2021-2029. This may be resolved in whole or in part by the penalty rezone program referred to in Item 1 above. This is a requirement under State Housing law – specifically Government Code §65863 otherwise referred to as “No Net Loss.” As has been previously discussed by staff in past meetings, this replacement would most likely result in additional units being required as part of the City’s North Bluff and South Stratford sites as no other realistic and feasible alternatives have been identified during preparation of the 6th Cycle HEU.
- 3) The City may also be obligated to process additional rezone/upzone programs that would add to the City’s ability to affirmatively further fair housing in the community above the minimum RHNA obligations for lower income affordable units (Government Code §65583(c)(10)(A)).

Next Steps for City Council Consideration

The Council's next steps depend on various outcomes of the Referendum, which largely have an effect on the status of the City's compliance with State Housing law and pending HCD enforcement. The following summarizes the various outcomes and next steps:

- 1) If the Referendum were to be withdrawn by the proponent before April 15, 2021 (per State Elections law, a withdrawal may occur any time up to the 88th day prior to an election), final processing of Ordinance 973 would continue and the City would remain on track with its 5th Cycle obligations, specifically Program 2E (North Commercial). This would allow City staff to continue processing the related LCP amendment through the California Coastal Commission (CCC) which was authorized by Ordinance 973. The Council would also consider adoption of the related Community Plan amendment at their meeting on February 16, 2021. If adopted, all local approvals related to Program 2E would be complete by the April 15, 2021, deadline.
- 2) If the Council submits the Referendum to the electorate, Ordinance 973 will continue to be stayed until an election can be held. City staff would inform the CCC of the pending election timeframe and could request that CCC continue processing of a conditional certification of the submitted LCP amendment. However, this means that final certification of the LCP amendment and the associated effective date of Ordinance 973 would be delayed until after the election takes place, and would only move forward if the Referendum fails. As a result, completion of Program 2E would be delayed beyond the April 2021 deadline for completion with potential consequences due to non-compliance with State law as described earlier in this report, which may prevent successful completion of the City's 6th Cycle Housing Element.

In the meantime, to minimize risk of State enforcement and other penalties, the Council can demonstrate to HCD that the City will continue to make a good faith effort to achieve compliance with the 5th Cycle Housing Element requirements by taking action in a future public hearing to adopt the Program 2E Community Plan amendment (in addition to the adoption of the amendments and rezone necessary to complete Program 2G related to the two vacant "Watermark" parcels). These actions are currently in process for a Planning Commission recommendation on January 12, 2021 and are tentatively scheduled for Council consideration on February 16, 2021.

- 3) If the Council repeals Ordinance 973 in its entirety, the Ordinance would be invalidated, and the associated pending LCP amendment would immediately be withdrawn. This action would cause the City to fail to complete 5th Cycle Program 2E and is expected to result in consequences as described earlier in this report. Further, this action would remove a required program from the City's draft 6th Cycle Housing Element that is being relied upon to create adequate sites that are needed to facilitate affordable units for lower income households in order to meet State law requirements. Repeal of the Ordinance is expected to cause significant delay to completion of the City's 6th Cycle Housing Element Update with additional associated consequences. Council direction would be needed to allocate additional project budget and identify additional processing steps as needed to bring the City's Housing Element into compliance with State law.

FISCAL IMPACT:

There is no fiscal action to be taken for this agenda item. However, the costs associated with holding an election (general or special) are not included in the approved budget for Fiscal Year 2020-21, and would need to be included in the next two-year budget cycle for any election to be held beyond the end of this fiscal year.

ENVIRONMENTAL IMPACT:

Pursuant to the California Environmental Quality Act (CEQA), the proposed actions have been analyzed and determined to be Statutorily Exempt pursuant to CEQA Guidelines Section 15270(a) because CEQA does not apply to projects, as defined by CEQA, which a public agency rejects or disapproves. Notwithstanding the applicability of the Statutory Exemption, the City's implementation of Program 2E has been the subject of prior environmental analysis including the Final Program Environmental Impact Report (PEIR) for the Professional Commercial and North Commercial Zoning Code Amendment (SCH #2019029058) certified by the Council on September 8, 2020 (Resolution 2020-47) and the 6th Cycle Housing Element Update Final PEIR (SCH No. 2020029064) certified by the Council on October 5, 2020 (Resolution 2020-52). Anticipated impacts for implementation of Program 2E has been disclosed in these prior environmental documents.

The NC/PC PEIR is available for review at: www.delmar.ca.us/Archive.aspx?ADID=1428

The 6th Cycle PEIR is available for review at:
www.delmar.ca.us/DocumentCenter/View/7171/Final-PEIR-91020

NEXUS TO COUNCIL GOALS AND PRIORITIES:

Compliance with the 5th Cycle Housing Element and certification of a 6th Cycle Housing Element Update are identified on the list of Council Goals and Priorities.

ATTACHMENTS:

Attachment A – Certificate of Sufficiency from the City Clerk
Exhibit A to Attachment A - Certification Letter from the ROV dated December 15, 2020
Attachment B - Referendum Repealing Ordinance 973



CERTIFICATE OF SUFFICIENCY

I, Ashley Jones, Administrative Services Director/City Clerk for the City of Del Mar, California, do hereby certify that:

The petition entitled "Referendum Against an Ordinance Passed by the City of Del Mar City Council – Ordinance No 973" was filed with the City Clerk on November 18, 2020.

Said petition contained 36 sections.

Said petition contained 601 raw signatures purporting to be signatures of qualified electors of the City of Del Mar.

On December 15, 2020, the San Diego County Registrar of Voters (ROV) completed the process of verifying the petition signatures.

Based on the attached letter from the ROV dated December 15, 2020 (Exhibit A), I have determined the following facts regarding this petition:

1. The number of signatures required to qualify the initiative for the general election (10% of the electorate) is 345.
2. The number of signatures verified as sufficient is 345.

Based on the above, the petition is deemed sufficient.

This certification will be presented to the City Council at its meeting to be held on January 11, 2021.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Del Mar this day of January 4, 2021.

Ashley Jones, Administrative Services
Director/City Clerk



County of San Diego

REGISTRAR OF VOTERS

County Operations Center Campus

5600 Overland Avenue, Suite 100, San Diego, California 92123-1278

Telephone: (858) 565-5800 Toll-free: 1 (800) 696-0136 TTY / TDD: (800) 735-2929

Facsimile: (858) 694-2955 Web Address: www.sdvote.com

MICHAEL VU
Registrar of Voters

CYNTHIA L. PAES
Assistant Registrar of Voters

December 15, 2020

Ashley Jones, Administrative Services Director
City of Del Mar
1050 Camino Del Mar
Del Mar, CA 92014-2698

Re: Referendum

“Referendum Against an Ordinance Passed by the City of Del Mar City Council - Ordinance No 973” petition was filed with the Registrar of Voters on November 19, 2020. As directed by your office, the Registrar of Voters conducted a verification of signatures up to the required amount of valid signatures (345). **A total of 345 signatures have been verified to be valid.** Results of the verification process are as follows:

CERTIFICATION OF RESULTS:

- Number of sections submitted 36
- Number of signatures submitted..... 601
- Number of signatures verified 418
- Number of signatures found to be valid 345
- Number of signatures found not to be valid 73
(Includes 18 duplicated signatures)
- Number of signatures required for qualification 345

If you have questions, please contact me at (858) 505-7201 or Javier De Anda at (858) 505-7357.

L. MICHAEL VU
Registrar of Voters

**Referendum Against an Ordinance Passed by the City of Del Mar City Council
Ordinance No 973**

To the CITY COUNCIL of the CITY OF DEL MAR

We, the undersigned, are duly registered and qualified voters of the City of Del Mar, County of San Diego, and constitute not less than 10 percent of the voters of the City of Del Mar. We hereby protest the adoption of Ordinance No. 973 adopted by the City Council on October 19, 2020. We hereby request that the City Council reconsider and repeal said Ordinance, or submit the Ordinance to a vote of the registered voters of the City of Del Mar. The title of the Ordinance which is the subject of the referendum is:
“AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING THE DEL MAR MUNICIPAL CODE CHAPTERS 30.24 AND THE CITY’S CERTIFIED LOCAL COASTAL PROGRAM CONSISTENT WITH PROGRAM 2-E REQUIRED BY THE CITY’S EXISTING CERTIFIED HOUSING ELEMENT RELATING TO A TOTAL OF 16 EXISTING PARCELS LOCATED IN THE NORTH COMMERCIAL ZONE IN THE CITY OF DEL MAR, CALIFORNIA”

The entire text of said Ordinance is attached hereto.

NOTICE TO THE PUBLIC: YOU HAVE THE RIGHT TO SEE AN “OFFICIAL TOP FUNDERS” SHEET. THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

THE USE OF YOUR SIGNATURE FOR ANY PURPOSE OTHER THAN QUALIFICATION OF THIS MEASURE IS A MISDEMEANOR. COMPLAINTS ABOUT THE MISUSE OF YOUR SIGNATURE MAY BE MADE TO THE SECRETARY OF STATE’S OFFICE.

IMPORTANT: *All signers of this petition must be registered to vote in the City of Del Mar, and all information must be completed and signed in ink in your own handwriting.*

For Official
Use Only

(1)Print Name: _____	Residence Address ONLY: _____	
Signature, as registered to vote: _____	City: State: _____	
(2)Print Name: _____	Residence Address ONLY: _____	
Signature, as registered to vote: _____	City: State: _____	
(3)Print Name: _____	Residence Address ONLY: _____	
Signature, as registered to vote: _____	City: State: _____	
(4)Print Name: _____	Residence Address ONLY: _____	
Signature, as registered to vote: _____	City: State: _____	
(5)Print Name: _____	Residence Address ONLY: _____	
Signature, as registered to vote: _____	City: State: _____	

ORDINANCE NO. 973

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30.24.010 Purpose

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

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

30.24.030 Allowable Uses

The following uses are allowable in the NC Zone:

A. Commercial uses provided that:

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

[No change to the listed uses]

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

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

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

30.24.070 Development Standards

In the NC Zone, the following development standards apply:

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

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

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

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

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

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

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

2. Valley District

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

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

8. North Hills District

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

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

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

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

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

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

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

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

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

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

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



Ellie Haviland, 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, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. 973, which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 19th day of October, 2020, by the following vote:

AYES: Mayor Haviland, Council Members Parks and Worden
NOES: Deputy Mayor Gaasterland, Council Member Druker
ABSENT: None
ABSTAIN: None



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

OFFICIAL TOP FUNDERS. Valid only for October 2020

**REFERENDUM AGAINST AN ORDINANCE PASSED BY THE CITY OF
DEL MAR CITY COUNCIL, ORDINANCE NO. 973**

**Petition circulation paid for by
Del Mar Hillside Community Association**

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