

ORDINANCE NO. 980

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, REZONING REAL PROPERTY IDENTIFIED AS ASSESSORS PARCEL NUMBERS 299-100-47 AND 299-100-48 LOCATED IN THE NORTH COMMERCIAL ZONE TO APPLY THE HOUSING ELEMENT IMPLEMENTATION OVERLAY ZONE AS NECESSARY TO IMPLEMENT REQUIRED CITY OF DEL MAR 5TH CYCLE HOUSING ELEMENT PROGRAM 2G PER STATE HOUSING LAW AND AMENDING ZONING CHAPTER 30.92 TO REFLECT THE REZONE ACTION

WHEREAS, the Housing Element is a State-mandated policy document with associated mandated regulatory requirements as set forth in the California Government Code; and

WHEREAS, California Government Code §65583.2(h) and (i) imposed a requirement on the City of Del Mar to process a rezone program as reflected in the existing 5th Cycle Housing Element Program 2G due to the City's failed progress during the City's 4th Cycle Housing Element planning period; and

WHEREAS, State law requires the City complete implementation of the required Program 2G rezone action by April 15, 2021, which is the end of the 5th Cycle planning period, in order to avoid enforcement penalties set forth in the Government Code; and

WHEREAS, 5th Cycle Housing Element Program 2G requires the City to rezone APNs 299-100-47 and 299-100-48 located in the North Commercial Zone to allow multiple dwelling unit residential use by-right at a density range of 20-25 dwelling units per acre with an affordability component; and

WHEREAS, the proposed rezone is necessary to comply with State Housing law; and

WHEREAS, on January 12, 2021, the Planning Commission unanimously recommended that the City Council proceed with timely approval to bring the City into compliance with State law and minimize the City's risk of State penalties, fiscal impacts, and associated negative consequences due to its current status in violation of State law; and

On March 15, 2021, the City Council adopted a Community Plan Amendment (Resolution 2021-12) amending the North Commercial land use designation to allow multiple-dwelling unit residential as an allowed primary use. This effectively completed the General (Community) Plan component of Program 2G. The City Council acknowledged that the required Program 2G zoning and rezone actions (to apply the required density of 20-25 du/ac and "by right" processing provisions to the two vacant parcels) were remaining 5th Cycle actions that would be considered at a Special Meeting of the City Council on March 25, 2021; and

WHEREAS, on March 25, 2021, the City Council introduced Ordinance No. 979 adding Chapter 30.92 to the Del Mar Municipal Code (DMMC) to create a new Housing Element Implementation Overlay Zone (HEI-OZ) to use an overlay zoning tool to be applied to real property through future rezone actions at the discretion of the City Council when necessary to implement required City Housing Element programs per State law.

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

SECTION ONE: That Assessor Parcel Numbers (APNs) 299-100-47 and 299-100-48 located in the North Commercial Zone (base zone), and as shown on “Exhibit A”, shall be rezoned to apply the HEI-OZ as regulated pursuant to prospective DMMC Chapter 30.92.

SECTION TWO: That DMMC Chapter 30.92 (HEI-OZ) be amended to read as follows:

30.92.020 Areas of Applicability.

The areas of applicability for the Housing Element Implementation Overlay Zone shall include the following properties:

<u>APN Location</u>	<u>Housing Element Program Description</u>	<u>Base Zone</u>
299-100-47-00 299-100-48-00	5 th Cycle Program 2-G – Two Parcels further described in DMMC Section 30.92.030(E)	North Commercial (NC)

30.92.030 Process for Permit Approval.

E. 5th Cycle Housing Element – Housing Program 2-G.

Pursuant to Government Code Sections 65583(c)(1)(A) and 65583.2(h) and (i), the City will rezone two adjacent vacant parcels at the south corner of Jimmy Durante Boulevard and San Dieguito Drive, roughly 2.3 acres in size in the NC Zone, to allow, “by right”, residential development of the properties at a density of 20-25 du/ac with such density allowance to include a requirement for a percentage of the residential units to be available, long-term, at affordable rates, either through dedication to a non-profit housing advocacy organization or through deed restrictions for no less than the minimum duration required under state housing law applicable to affordable dwelling units. City Council adopted Rezone RP 20-001 on April 5, 2021 (Ordinance 979).

SECTION THREE: That the City Council finds that approval of this Ordinance is Statutorily Exempt pursuant to CEQA Guidelines Section 15265 because the proposed action constitutes an amendment to the City’s certified Local Coastal Program (LCP) and CEQA does not apply to activities or approvals by a local government as necessary for the preparation and adoption of a LCP amendment for review and certification by the

California Coastal Commission (CCC) as set forth in Section 21080.9 of the Public Resources Code. Accordingly, the certified City of Del Mar LCP constitutes a plan for use in the CCC's regulatory program as certified under Section 21080.5 of the Public Resources Code. The proposed actions include corollary amendments to the City's Municipal Code (Zoning).

Notwithstanding the applicability of the Statutory Exemption, future development of the two parcels included in 5th Cycle Housing Element Program 2G for multiple-dwelling residential use as affected by the proposed actions have 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 City Council on September 8, 2020 (Resolution 2020-47) and the 6th Cycle Housing Element Update Final PEIR (SCH No. 2020029064) certified by the City Council on October 5, 2020 (Resolution 2020-52). Anticipated impacts for the proposed actions have been disclosed in these prior environmental documents and the HEI-OZ incorporates standard Mitigation Monitoring and Reporting protocols (see DMMC Section 30.92.050) to ensure impacts are minimized consistent with prior environmental documents. No new or substantially greater impacts would result from application of the HEI-OZ to the two parcels included in 5th Cycle Housing Element 2G.

As such, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the Final PEIRs referenced above, the proposed actions do not require further environmental review. Pursuant to CEQA Guidelines Section 15162(b), no further analysis or environmental documentation is necessary. Accordingly and notwithstanding the applicability of the Statutory Exemption referenced above, the proposed actions are merely a step in furtherance of the original programs for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

SECTION FOUR: This Ordinance was introduced by the City Council on March 25, 2021.

SECTION FIVE: 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 the votes cast.

SECTION SIX: Upon adoption, the Ordinance will be submitted to the California Coastal Commission for certification as a Local Coastal Program Amendment (LCPA 20-003). The Ordinance will take effect and be in force on the date the Coastal Commission takes action to unconditionally certify the Local Coastal Program Amendment.

SECTION SEVEN: The City shall file a copy of the adopted Ordinance with the State Department of Housing and Community Development by April 15, 2021.

SECTION EIGHT: If any section, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, illegal or unconstitutional by a decision or order of any court of competent jurisdiction, then such decision or order shall not affect the validity and

enforceability of the remaining portions of this Ordinance. The City Council hereby declared that it would have passed and adopted this Ordinance, and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases is declared invalid, illegal or unconstitutional.

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, California, at the Regular meeting held this 5th day April 2021.



Terry Gaasterland, Mayor
City of Del Mar

APPROVED AS TO FORM:



Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, SARAH KRIETOR, 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. 980, 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 5th day of April, 2021, by the following vote:

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



Sarah Krietor, Acting City Clerk
City of Del Mar