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W16b

LCP-6-DMR-21-0035-1 (5th Cycle Housing Element)

May 11 - 13, 2022

EXHIBITS

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ORDINANCE NO. 979

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, ADDING ZONING CHAPTER 30.92 TO THE DEL MAR MUNICIPAL CODE TO CREATE A NEW HOUSING ELEMENT IMPLEMENTATION OVERLAY ZONE AS AN OVERLAY ZONING TOOL THAT CAN BE APPLIED TO REAL PROPERTY THROUGH FUTURE REZONE ACTIONS AT THE DISCRETION OF THE CITY COUNCIL WHEN NECESSARY TO IMPLEMENT REQUIRED CITY OF DEL MAR HOUSING ELEMENT PROGRAM ACTIONS PER STATE LAW

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 its 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

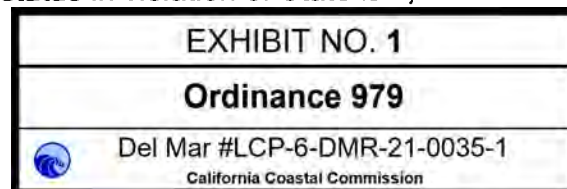
WHEREAS, 5th Cycle Housing Element Program 2G requires the City amend its Community Plan North Commercial land use designation and rezone APNs 299-100-47 and 299-100-48 located in the North Commercial Zone to allow multiple dwelling unit residential use by-right at a density range of 20-25 dwelling units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

WHEREAS, the proposed Housing Element Implementation Overlay Zone will facilitate timely implementation of the required Program 2G rezone action; and

WHEREAS, once created, the overlay zone could be applied to parcels throughout the City via rezone actions in the future as necessary to implement the City's Housing Element and comply with State law; and

WHEREAS, pursuant to State law, rezone programs in the overlay zone will be subject to an administrative level ministerial approval process where submitted development applications will be reviewed for compliance with the published development standards and mitigation, monitoring, and reporting criteria; 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



WHEREAS, on February 16, 2021, the City Council considered an ordinance to adopt the overlay zone and directed staff to prepare objective design standards to be included in the overlay zone; and

WHEREAS, on February 24, 2021, the Design Review Board considered the concept of design standards in the overlay and provided feedback to the City Council; and

WHEREAS, on March 9, 2021, the Planning Commission re-reviewed the overlay zone and further recommended incorporation of objective design standards that would be applicable to parcels where the overlay zone is to be applied.

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

SECTION ONE: That the Del Mar Municipal Code (DMMC) be amended to add a new Chapter 30.92 Housing Element Implementation Overlay Zone to read as follows:

Chapter 30.92 – Housing Element Implementation Overlay Zone

30.92.010 Purpose.

The purpose and intent of the Housing Element Implementation Overlay Zone is to facilitate housing opportunities within the community via implementation of required rezone programs pursuant to the City of Del Mar's adopted Housing Element where required for compliance with State Housing Element law.

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>

30.92.030 Process for Permit Approval.

- A. Notwithstanding the standard permit process provisions of the Del Mar Municipal Code, permit approvals for proposed multiple dwelling unit housing development within the Housing Element Implementation Overlay Zone shall be issued in accordance with an administrative level ministerial approval process where the proposed development is consistent with the applicable Housing Element program indicated in Section 30.92.020 and development standards in Section 30.92.040.
- B. Proposed development on property in the Housing Element Implementation Overlay Zone that does not meet the criteria stated in Section 30.92.030(A) shall

be subject to the standard procedures for permit approval pursuant to the Del Mar Municipal Code.

- C. An administrative Coastal Development Permit (CDP) shall be required for proposed development.
- (1) The administrative CDP shall be obtained in accordance with Section 30.75.080(E).
 - (2) The Planning Director shall prepare written findings of fact in accordance with Section 30.75.140 as necessary to support any decision to grant permit approval.
 - (3) No public hearing shall be required.
 - (4) Public notice shall be required in accordance with Section 30.75.120.
 - (5) Once a final decision of approval, conditional approval, or denial is issued by the Planning Director, the notice of final action shall be provided within seven calendar days to the Executive Director of the Coastal Commission and to any interested parties who requested notice in writing in accordance with Section 30.75.100.
 - (6) Within the appealable area of the coastal zone (Section 30603 of the Coastal Act and as generally shown on the City Post Certification Map) property that is located between the first public road and the sea, within 300 feet of a beach or the mean high tide line, and all areas within 100 feet of wetlands and streams), the Planning Director's decision to approve an Administrative CDP in the Housing Element Implementation Overlay Zone may be appealed to the Coastal Commission within 10 calendar days in accordance with Section 30.75.110. Proposed development in the Housing Element Implementation Overlay Zone that is located outside of the coastal zone appealable area is not appealable to the Coastal Commission.
- D. Upon issuance of an administrative CDP, the applicant may apply for an administrative level approval of Construction Permits as applicable in accordance with DMMC Chapter 23.05 (Construction Permits).
- E. Reserved.

30.92.040 Development Standards.

The development standards applicable to proposed development in the Housing Element Implementation Overlay Zone shall be in accordance with the applicable base zone, overlay zones, and all applicable provisions of DMMC Title 30, unless otherwise indicated herein, or where necessary to comply with Federal and State law.

- A. Density. 20-25 dwelling units per net acre.

B. Construction Design Standards.

(1) Setbacks.

- a. Front yard: 10 feet or as otherwise required, whichever is greater.

Street Side Yard: 10 feet or as otherwise required, whichever is greater.
- b. If parcels in the Overlay Zone share a property line with an adjacent parcel developed with an existing single dwelling unit or duplex residential use, the following additional setback requirements apply to proposed projects in the Overlay Zone to provide an appropriate transition to the existing use:
 - i. A minimum 15-foot-wide landscaped buffer (setback) shall be provided and maintained on the project side of any property line.
 - ii. Any upper stories of residential uses in the Overlay Zone shall be setback 30 feet from any property line adjacent to the residential use.
- c. Construction, grading, or other encroachment of any kind on substantial steep slopes (as defined in DMMC Section 30.52.060.1.b), or within 20 feet of the top or 10 feet of the bottom of substantial steep slopes exceeding 25 percent grade, or the construction of structures which overhang such steep slopes or steep slope setbacks, shall be not be allowed.

(2) Building Design.

- a. Maximum average size of dwelling units for a development site shall not exceed 1,000 square feet of "Bulk Floor Area" as defined and regulated in DMMC Chapter 30.72, excepting that attached dwelling units shall be measured to the center of shared building walls.
- b. No more than 75% of any building facade shall be in a single plane. An average of a five-foot offset, with a minimum of one-foot, is required for the remaining 25% of the building facade.
- c. Decks on any roof of any building shall not be allowed.
- d. Habitable portions of the development exceeding one-story shall have a "flat roof" design, allowing minimum necessary slope for drainage.

- e. Single-story design elements such as entries and clerestories with two-story volume or heights shall not be allowed.
- f. Ceiling heights on any habitable building level shall not exceed 10 feet.
- g. Elevated deck areas associated with individual units shall be limited to 100 square-feet in area and shall be oriented towards the street, and no elevated deck shall face a property line shared with an adjacent parcel developed with an existing single dwelling unit or duplex residential use.
- h. Covered outdoor areas, including but not limited to entries, porches, decks and balconies, shall be limited to 10% of the associated unit size.
- i. Earth tone paint and material colors shall be used for building exteriors, including flat roofs.

(3) Auxiliary Structures/Equipment and Utilities.

- a. All roof appurtenances including, but not limited to air conditioning units and mechanical equipment shall be shielded to eliminate noise and architecturally screened from view from on-site parking areas, adjacent public streets, and adjacent properties.
- b. All ground-mounted mechanical equipment, including but not limited to heating and air conditioning units, trash receptacle areas and adequate areas for collecting and loading recyclable materials, shall be completely shielded to eliminate noise and screened from surrounding properties by use of a wall, view-obscuring fencing and/or landscaping, or enclosed within a building.
- c. Ground-mounted mechanical or electrical equipment shall be screened using a combination of elements including solid masonry walls, berms, and landscaping. Screening wall shall be designed to be architecturally compatible with the building design. All new and existing utility service connections within the boundaries of the development site shall be placed underground.
- d. Trash receptacles and adequate areas for collecting and loading recyclable materials shall be incorporated into the building design, located in garages, and/or enclosed by a six-foot high masonry wall with view-obscuring gates and screened with vegetation. The finish materials and colors of an exterior enclosure shall match the exterior building materials. No trash receptacle and areas for collecting and loading recyclable materials shall face a property line shared with an

adjacent parcel developed with an existing single dwelling unit or duplex residential use.

- e. Outdoor storage areas shall be entirely enclosed by solid masonry walls not less than six feet in height to adequately screen such areas from public view. Substitutions such as masonry, wood, or metal pilasters with wrought iron or chain link and view-obscuring material must be harmonious with exterior building materials.
- f. Any gutters, scuppers, or downspouts proposed on the exterior of a building shall be decorative or designed to be integrated with the building façade.

(4) Site and Landscape Standards.

- a. Hardscape shall be limited to no more than 20 percent of front yard and street side yard setbacks, including driveways and drive aisles.
- b. Screening plants shall buffer privacy encroaching views in at least 75% of the intended area, with species selected to reach this standard within one-year of planting. Grasses and deciduous plants shall not be used for screening purposes.
- c. For screening purposes, any new trees shall be provided at a minimum 24-inch box size and any new shrubs shall be provided at a minimum five-gallon size.
- d. New trees shall be regionally native or selected from the City of Del Mar's Recommended Tree List.
- e. Only regionally native species shall be planted within steep slope setback areas and wetland buffer areas.

(5) Parking.

- a. Parking shall be provided in accordance with DMMC Chapter 38.80.
- b. Garage parking shall be required in accordance with the provisions of DMMC Chapter 30.80, unless accommodation without a garage enclosure is necessary to meet the minimum density range to provide affordable units.
- c. When garage parking is not required per the exception listed in Section 30.92.040.B-5(b), required parking areas/spaces shall be:
 - i. Located at the rear of the development site and screened from public view by the dwelling unit structure(s) and/or landscape screening; or

- ii. Located at grade, situated beneath dwelling units and screened from view along fronting streets by architectural and/or landscaping features.
 - d. Private drive aisles accessing parking shall be located at the rear or side of a property to avoid excessive curb cuts and maximize landscaping at the street frontage.
 - e. Curb cuts shall be located to maximize sight distances for motorists, bicycles and pedestrians entering or exiting the property, crossing the driveways, and to limit interference with off-site circulation, parking, and safety. Any vegetation proposed to be planted adjacent to a driveway shall be selected and located so as to maintain adequate sight lines to and from the property, and along the property frontage to the public street(s) and intersection(s).
 - f. Driveway slope angles shall not exceed 15%.
 - g. Open-sided parking coverings that contain solar collectors/panels shall not be calculated towards maximum allowed Lot Coverage.
 - H. Surface parking areas shall be separated from a building with both a raised pedestrian sidewalk (minimum four feet in width) and a landscape strip (minimum eight feet in width).
- (6) Exterior Lighting.
- a. All exterior lighting shall be low intensity and directed downward, below the horizontal plane of the fixture, to prevent objectionable brightness or light trespass onto adjacent properties. The source of the light bulb must not be visible from adjacent properties or public rights of way. Natural gas lighting shall not be allowed.
 - b. Fixtures must be "Full Cut Off" designated or "Fully Shielded" fixtures, so that no light is emitted above the lowest light emitting part of the fixture. Shielded and unshielded up-lighting shall not be allowed.
 - c. Light fixtures shall be located no closer to the property line than four times the mounting height of the fixture, and shall not exceed the height of adjacent off-site structures.
 - d. Focused flood lighting may be allowed for security purposes but shall be mounted to be downward directed only, shall be located no higher than the first story, and shall utilize motion-sensor activation at all times.

- e. Accent lighting used only for highlighting architectural features (e.g., “wall washing”) shall not be allowed.
- f. Pole-mounted lights shall not be allowed unless the lighting source is entirely screened from public view from a public street or shielded in a courtyard or interior portion of a multiple-dwelling unit complex and light is shielded from any adjacent parcel developed with an existing single dwelling unit or duplex residential use.

30.92.050 Mitigation, Monitoring, and Reporting.

All proposed multiple dwelling unit housing development within the Housing Element Implementation Overlay Zone shall be subject to the following objective standard protocols for mitigation, monitoring, and reporting as necessary to avoid a significant impact to the environment in accordance with applicable State and Federal laws.

A. Cultural Resources.

(1) Historic Resources.

- a. Where development would involve the alteration or demolition of a structure greater than 50 years old, a historic evaluation by a Secretary of Interior's Standards for Architectural Historian or Historic Architect shall be provided to determine if the resource meets the definition of a Historic Resource as defined in CEQA Guidelines Section 15064.5. If the structure is determined to be a Historic Resource, any proposed alteration shall follow mitigation guidelines contained in CEQA Guidelines Section 15126.4(b). Mitigation standards may include, but are not limited to avoidance and preservation, conducting alterations in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (including as applicable, standards for Preservation, Rehabilitation, Restoration and Reconstruction), and documenting resources. The approach to comply with these standards shall be prepared by an Architectural Historian or Historic Architect and provided to the City.
- b. Demolition and/or significant diminution of designated historic landmarks shall be prohibited.

(2) Native American Consultation.

Upon receipt of a development proponent's preliminary application, the City shall request consultation regarding the proposed development with any California Native American Tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public

Resources Code, and contact the Native American Heritage Commission for assistance in identifying any California Native American Tribe. The City shall provide formal notice for each Tribe traditionally and culturally affiliated with the geographic area of the project site including the location and a description of the proposed development, and an invitation to engage in scoping consultation. Each Tribe that receives this notice has 30 calendar days to accept the invitation to engage in consultation. The local government must initiate consultation within 30 calendar days of a Tribe's acceptance of the invitation to engage in consultation. Consultation occurs between the City and the tribe(s) and must comply with the confidentiality requirements. Tribal consultation concludes either 1) upon documentation of an enforceable agreement regarding the treatment of tribal resources at the project site (Government Code §65913.4(b)(2)(D)(i)), or 2) one or more parties to the consultation, acting in good faith and after a reasonable effort, conclude that a mutual agreement cannot be achieved (Government Code §65913.4(b)(2)(D)(ii)).

(3) Archaeological Survey.

- a. Where a site has been disturbed from prior development or grading activities, eliminating the possibility of surface archaeological resources to be encountered, an archaeological survey shall not be required.
- b. For all other sites, an archaeological survey report shall be submitted by a Registered Professional Archaeologist.
 - i. The survey report shall include a record search of known archaeological resources and document results of the field survey including any resources encountered.
 - ii. If the surveys find the potential for significant resources, the Registered Professional Archaeologist shall develop and implement an archaeological testing program. The testing program shall be adequate to allow a determination of significance pursuant to CEQA Guidelines Section 15064.5(b) and shall include a Native American monitor. Shall the testing find significant resources are present, a mitigation program shall be implemented consistent with CEQA Guidelines Section 15126.4(b)(3). Mitigation may include, but is not limited to, conservation and protection of the site in perpetuity, implementation of a data recovery plan, or other on-site preservation methods such as capping.
 - iii. A Native American monitor shall be consulted regarding the proposed mitigation plan. If there is disagreement regarding the culturally affiliated tribal government, the Native American

Heritage Commission shall be consulted. All reports, methods, testing programs, curation, and other aspects of the archaeological investigation shall follow the Secretary of the Interior's Guidelines for Archaeological Documentation.

- (4) Archaeological and Native American Monitoring.
- a. Archaeological monitoring is required in accordance with Section 30.92.050(A)(3)(b), unless a Registered Professional Archaeologist and Native American Monitor provide written recommendation that monitoring is not recommended.
 - b. Prior to the start of any ground-disturbing activity, an archaeological and Native American monitor shall be retained to monitor ground-disturbing activities including, but not limited to, grading, excavation, brush clearance, and grubbing. The archaeological monitor shall conduct preconstruction cultural resources worker sensitivity training to bring awareness to personnel of actions to be taken in the event of a cultural resources discovery.
 - c. The duration and timing of monitoring shall be determined by the qualified archaeologist in consultation with the City and the Native American Monitor. Initially, all ground-disturbing activities shall be monitored. However, the qualified archaeologist, based on observations of soil stratigraphy or other factors, and in consultation with the City and the Native American Monitor, may reduce the level of monitoring as warranted.
 - d. In the event that archaeological resources are accidentally discovered or unearthed during construction activities, all earth-disturbing work within a 25-meter radius shall be temporarily suspended or redirected until the qualified archaeologist has identified and evaluated the nature and significance of the find, in compliance with CEQA Guidelines Section 15064.5(f). Construction activities shall be redirected to other work areas until the archaeologist determines that work can resume in the vicinity of the find. If the artifact that is accidentally discovered or unearthed is of Native American origin, the certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources shall be consulted for identification and evaluation. If the discovery is determined significant, a data recovery program or other treatment method determined in consultation with the City and Native American with knowledge of the cultural resources, if applicable, shall be implemented in order to mitigate impacts to the resource.
 - e. In the event that human remains are discovered or unearthed during construction activities, all earth-disturbing work within a 25-meter

radius of the human remains shall be temporarily suspended or redirected and the county coroner must be contacted as required by California Health and Safety Code Section 7050.5. If the remains are determined by the coroner to be Native American in origin, the coroner is responsible for contacting the Native American Heritage Commission (NAHC) within 24 hours. California PRC Sections 5097.94 and 5097.98 require consultation with the NAHC, protection of Native American remains, and notification of most likely descendants to ensure the appropriate and dignified treatment of Native American human remains and any associated grave goods.

B. Biological Resources.

- (1) The applicant shall provide information with the development application detailing the biological resources present on-site including identification of jurisdictional resources such as State or Federal wetland, environmentally sensitive habitat area (as defined in DMMC Section 30.75.030). If wetlands are present as defined in DMMC Section 30.53.030, a jurisdictional wetland delineation shall be provided. If there is a potential for sensitive plant or wildlife species to be present, applicable protocol surveys shall be conducted.
- (2) If wetlands are present on-site the project design shall ensure wetlands are preserved and where appropriate restored, along with a minimum 100-foot wetland buffer. If wetlands are located off-site, a 100-foot wetland buffer shall be provided from the edge of the off-site wetland to the edge of the development footprint. The wetland buffer may be reduced to no less than 50-feet with written concurrence from the California Department of Fish and Wildlife (CDFW). Permitted uses in wetlands are specified in DMMC Section 30.53.080. Wetland buffers shall be consistent with DMMC Section 30.53.090. Public access to wetlands and wetland buffer areas shall be restricted as necessary to maintain the biological productivity of the wetland. This may be accomplished by landscape berms, fencing, or other suitable barriers.
- (3) Sensitive habitat areas (including wetlands and wetland buffers) shall be retained or restored to their natural state to ensure the future protection of the designated area(s) from encroachment, disturbance, or degradation. Prior to the issuance of Certificate(s) of Occupancy, protected habitat areas shall be preserved through recordation of an open space deed restriction, conservation easement, or open space easement over the protected area(s) to ensure their protection and to serve notice to the property owner, subsequent owners or interested parties of the restrictions in effect on such property.
- (4) Impacts to Environmentally Sensitive Habitat Areas shall be avoided to the maximum extent feasible. Where impacts cannot be avoided, the applicant

shall identify and implement the mechanism(s) proposed to offset impacts, which may include one or more of the following:

- a. Implementation of on-site restoration, including a monitoring and long-term management component.
 - b. Conservation of habitat on-site.
 - c. Purchase of habitat credits at an off-site mitigation bank if onsite restoration and/or conservation of habitat on-site is deemed not suitable by a qualified biologist due to site constraints and/or vegetation.
- (5) Removal of protected trees as defined in DMMC Section 23.50.020(E) shall be replaced consistent with the ratios provided in DMMC Section 23.50.090 or through payment into the City's Tree Mitigation Fund if on-site replacement is deemed not suitable by a qualified arborist due to site constraints and/or vegetation.
- (6) The clearing and grading of trees and shrubs shall occur outside of the avian and raptor breeding season of January 1 through August 31 to avoid damage to nests and nesting birds consistent with the Migratory Bird Treaty Act. If clearing and grading during the avian breeding season is proposed, then a focused nest survey shall be conducted by a qualified biologist 72 hours prior to the vegetation removal. If active nests are discovered during the nest survey, those nests shall be avoided until the young have fledged. The qualified biologist shall recommend appropriate nest setback distances to be implemented during construction that are based on the species of bird and applicability of noise attenuation measures, the topography between the nest and the proposed disturbance activity, and the surrounding vegetation.
- (7) Where habitat for California gnatcatcher is present within or adjacent to the project site, breeding season avoidance measures shall be implemented. If project-related work is to occur during the breeding season for California gnatcatcher (February 15 through August 31), pre-construction protocol-level surveys for California gnatcatcher shall be performed to determine the status of breeding California gnatcatchers on site and within 500 feet of the site. If a nesting California gnatcatcher pair is detected on site or within 500 feet of the site, noise attenuation measures shall be implemented to ensure that ambient noise levels are equal to or less than 60 decibels at the nest. Nest monitoring by an individual holding a Section 10(a) U.S. Fish and Wildlife Service recovery permit for California gnatcatcher shall be conducted to ensure that the nesting California gnatcatchers remain undisturbed by construction.

- (8) Where landscaping or revegetation is proposed in proximity to native vegetation on- or off-site, the landscaping and/or revegetation plan shall not include any invasive plant species listed on the California Invasive Plant Council's Invasive Plant Inventory Database.

C. Noise.

- (1) Construction Noise. The applicant shall provide a construction noise mitigation program to the City that demonstrates how construction activities will comply with DMMC Section 9.20.050. Construction noise reduction measures may include, but are not limited to the following:
 - a. Temporary sound barriers/shielding adjacent to sensitive receivers. The required location, height, and materials of the barrier shall be specified.
 - b. Siting of staging areas, stationary noise sources, and other noise generators away from sensitive receivers.
 - c. Reduction of construction equipment idling time and fitting of construction equipment with noise reducing devices.
 - d. Resident notification of construction schedule.
- (2) On-site Noise.
 - a. Project designs shall ensure all outdoor noise generating equipment is shielded to provide noise attenuation to achieve noise level limits at the nearest property line consistent with DMMC Section 9.20.040 - Sound Level Limits.
 - b. Project outdoor use areas shall be shielded from roadway noise through building attenuation or other methods.

D. Paleontological Resources.

- (1) Applicants shall be required to provide the following supporting information as part of a development application to determine applicability of this section:
 - a. The types and depth of geological formations present.
 - b. The paleontological sensitivity of each geologic formation.
 - c. Proposed grading depths into each formation.
- (2) Any project that requires disturbance into high or moderate sensitivity paleontological formations shall be required to provide a paleontological

monitor during ground disturbing activities. The requirement shall be as follows:

- a. A qualified paleontologist (an individual with an MS or PhD in paleontology or geology who is familiar with paleontological procedures and techniques, who is knowledgeable in the geology and paleontology of San Diego County, and who has worked as a paleontological mitigation project supervisor in the County for a least one year) shall attend the preconstruction meeting to consult with the grading and excavation contractors concerning excavation schedules, paleontological field techniques, and safety issues.
- b. A paleontological monitor (an individual who has experience in the collection and salvage of fossil materials, working under the direction of a qualified paleontologist) shall be on site on a full-time basis during the original cutting of previously undisturbed deposits of high paleontological resource potential to inspect exposures for contained fossils.
- c. Grading activities in previously undisturbed deposits of moderate paleontological resource potential shall be monitored on a part-time basis. In the event that paleontological resources are discovered or unearthed during project subsurface activities, all earth-disturbing work within a 100-meter radius shall be temporarily suspended or redirected until a certified paleontologist has recovered, identified, and/or evaluated the nature and significance of the find, in compliance with CEQA Guidelines Section 15064.5(f). After the find has been appropriately mitigated, work in the area may resume.
- d. During the monitoring and recovery phases of the mitigation program, the qualified paleontologist and/or the paleontological monitor shall routinely collect stratigraphic data (e.g., lithology, vertical thickness, lateral extent of strata, nature of upper and lower contacts, and taphonomic character of exposed strata). Collection of such data is critical for providing a stratigraphic context for any recovered fossils.
- e. Fossil remains collected during monitoring and salvage shall be cleaned (removal of extraneous enclosing sedimentary rock material), repaired (consolidation of fragile fossils and gluing together broken pieces), sorted (separating fossils of the different species), and cataloged (scientific identification of species, assignment of inventory tracking numbers, and recording of these numbers in a computerized collection database) as part of the mitigation program. Prepared fossils, along with copies of all pertinent field notes, photos, and maps, shall be deposited (as a donation) in a scientific institution with permanent paleontological

collections such as the San Diego Natural History Museum. Donation of the fossils shall be accompanied by financial support for preparation, curation, and initial specimen storage, if this work has not already been completed.

- f. A final summary report shall be completed that outlines the results of the mitigation program. This report shall include discussions of the methods used, stratigraphic section(s) exposed, fossils collected, and significance of recovered fossils.

E. Public Views.

Projects shall be designed to ensure that no primary scenic views or scenic views from public streets, roads or pedestrian trails are obstructed, unless there is no feasible alternative siting which eliminates or significantly reduces the obstruction, and that the bulk and scale of the proposed structure have been minimized to the greatest extent feasible commensurate with preserving the physical characteristics of the site. Protection of public views will be evaluated based on consistency with public view protection policies IV-22 through IV-27 of the City of Del Mar Local Coastal Program (LCP) Land Use Plan.

F. Steep Slopes.

Construction, grading, or other encroachment of any kind on substantial steep slopes exceeding 25 percent grade, or within 20 feet of the top or 10 feet of the bottom of substantial steep slopes exceeding 25 percent grade, or the construction of structures which overhang such steep slopes or steep slope setbacks, shall be prohibited except as specified in DMMC Section 30.52.060(A).

G. Wildfire.

To ensure protection of the public health and safety from wildfire, all development within or adjacent to a "Very High" or "High" Fire Hazard Severity Zone shall be required to incorporate enhanced fire safety measures consistent with the State Fire Code and Building Code to the satisfaction of the Fire Marshall and Building Official.

SECTION TWO: That DMMC Section 30.75.080 (Coastal Development Permits Issued by the City) be amended to read as follows:

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. through 3. [No change]

4. Applications for by-right multiple dwelling unit development in accordance with the Housing Element Implementation Overlay Zone pursuant to Chapter 30.92.

SECTION THREE: That the City of Del Mar Local Coastal Program (LCP) be amended to incorporate the new DMMC Zoning Chapter 30.92 Housing Element Implementation Overlay Zone as identified in Section One of this Ordinance and to reflect the ancillary amendment to existing Section 30.75.080 (Coastal Development Permits Issued by the City) that clarifies the by-right local permit process that applies in the Housing Element Implementation Overlay Zone pursuant to State law.

SECTION FOUR: That the City Council finds that approval of this Ordinance is Statutorily Exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15265 because the proposed action constitutes an amendment to the City's certified Local Coastal Program (LCP) to facilitate the implementation of Government Code Section 65583.2 (h) and (i) pursuant to State Housing law. 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 a corollary amendment to the City's Municipal Code (Zoning). The future application of the Overlay Zone to certain parcels as required by the City's Housing Element to implement Government Code Section 65583.2 (h) and (i), including 5th Cycle Program 2G for multiple-dwelling residential use on two vacant parcels in the North Commercial Zone that requires the City Council's discretionary approval resulting in a physical change to the environment, will be analyzed in accordance with CEQA prior to such approval.

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

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 the 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 the Coastal Commission takes action to unconditionally certify the Local Coastal Program Amendment.

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

SECTION NINE: 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. 979, 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

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

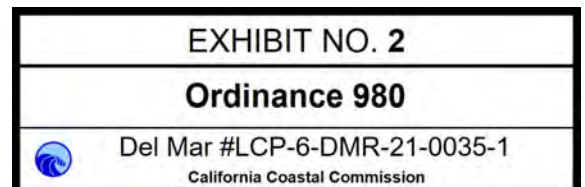
WHEREAS, State law requires the City complete implementation of the required Program 2G rezone action by April 15, 2021, which is the end of the 5th Cycle planning period, in order to avoid enforcement penalties set forth in the Government Code; and

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