

## ORDINANCE NO. 1002

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, REPEALING AND REPLACING THE DEL MAR MUNICIPAL CODE CHAPTER 30.91 ACCESSORY DWELLING UNIT (ADU) REGULATIONS; AND AMENDING RELATED SECTIONS IN THE DEL MAR MUNICIPAL CODE AND LOCAL COASTAL PROGRAM (LCP) ALL RELATING TO THE HARMONIZATION OF ADU REGULATIONS IN THE CALIFORNIA GOVERNMENT CODE SECTIONS 65852.2 AND 65852.22 WITH THE CALIFORNIA COASTAL ACT AND THE CITY'S CERTIFIED LCP

WHEREAS, the City of Del Mar is a charter City and State Housing law applies to all general law and charter cities in the State of California; and

WHEREAS, the State legislature declared that "Housing is a statewide concern", that California faces a housing crisis, that Accessory Dwelling Units (ADUs) are a valuable form of housing, and that local jurisdictions are mandated to comply with applicable State housing laws; and

WHEREAS, the State Legislature also declared that ADUs are an "essential component of California's housing supply" and that ADUs provide additional rental housing; and

WHEREAS, when the State revises ADU law found in Government Code Section 65852.2, a local jurisdiction's ADU Ordinance, if non-compliant with the new ADU laws, is rendered "null and void" and local jurisdictions must continue to process ADU applications through a ministerial process in accordance with State law; and

WHEREAS, proposed ADU projects must comply with the current ADU law, the California Coastal Act, and the remaining valid provisions in the City's certified Local Coastal Program (LCP); and

WHEREAS, the City of Del Mar Community Plan is the General Plan for the City of Del Mar and has an overall goal to "preserve and enhance the special character of Del Mar", this includes maintaining the "village-like community of substantially single family residential character, a picturesque and rugged site, and a beautiful beach" as well as preserving and enhancing "Del Mar's special residential character and small town atmosphere with its harmonious blending of buildings and landscape in proximity to a beautiful shoreline"; and

WHEREAS, the City has a certified Housing Element for the 6<sup>th</sup> Cycle years 2021-2029 that has been incorporated into the City's Community Plan as a standalone element; and

WHEREAS, the certified Housing Element requires the City to accommodate a regional housing need allocation (RHNA) of 163 housing units, comprised of 37 very-low



income units, 64 low-income units, 31 moderate-income units, and 31 above moderate-income units and an additional 12 low income unit “carryover” from the 5th Cycle planning period (2013-2021) for a total obligation of 175 units including 113 lower income units as well as 100 additional opportunities for moderate income households, lower income households, and special needs households; and

WHEREAS, production of ADUs is one strategy of a City Council-adopted multi-faceted approach to meet the City’s affordable housing obligations in compliance with State law; and

WHEREAS, the City’s overall stated housing goal in the Housing Element continues to be to “inspire a more diverse, sustainable, and balanced community through implementation of strategies and programs that will result in economically and socially diversified housing choices that preserve and enhance the special character of Del Mar”; and

WHEREAS, the City has made and continues to make progress toward its housing programs and housing production targets in its certified Housing Element; and

WHEREAS, adoption of this ADU Ordinance is a necessary action to continue progress towards production of affordable housing in a way that minimizes impacts to local neighborhoods; and

WHEREAS, ADUs are intended by the State Legislature to be used for dwelling purposes to provide for more housing stock in California and to create lower-cost housing opportunities, and during the public hearings concerning this Ordinance considerable public testimony and evidence was provided that homeowners have abused the ADU process by using ADUs as recreational rooms, office spaces, and to secure better private views of the ocean; and

WHEREAS, the California Department of Housing and Community Development (HCD) indicated in its May 31, 2023, Housing Element certification letter that the City must continue the timely and effective implementation of all Housing Element programs to maintain its status of having a certified Housing Element, and HCD has the authority to revoke the City’s Housing Element compliance if the City’s actions do not comply with State law or the Housing programs are not timely implemented; and

WHEREAS, ADU law provides that the California Coastal Act is not superseded, in any way altered, or lessened by its application to ADU laws; (Cal. Gov. Code. Sec. 65852.2(l)); and

WHEREAS, the City of Del Mar is located entirely within the “Coastal Zone” boundary and is therefore subject to full compliance with the California Coastal Act; and

WHEREAS, the City of Del Mar has significant coastal resources that require protection under the Coastal Act, including but not limited to, the protection of scenic



public coastal views which are found throughout the community, preservation of public access and recreation opportunities that must be assured including public access to the beach, viewpoints, and trail connections to the bluffs, lagoons, and open space preserve areas along the shoreline, and protection of environmentally sensitive habitat areas and coastal resources such as coastal bluffs, sandstone bluffs, wetlands, lagoons, river inlets, and protected tree species native to the City including Torrey Pines and Monterrey Cypress trees; and

WHEREAS, in order to effectively implement applicable State housing laws, the City must harmonize the Coastal Act and the City's LCP policies and regulations with the State's housing laws; and

WHEREAS, the standard of review for proposed ADU development in the City of Del Mar must be balanced against the mandates of the Coastal Act and stated as objective standards within the City's certified Local Coastal Program to ensure protection of public scenic views, public access, coastal resources and public health and safety; and

WHEREAS, within the City of Del Mar there are narrow roads located in the residential zones and during times of emergencies or public emergency evacuations significant public safety issues are likely to arise where additional on-street parking is added to these already constrained streets; and

WHEREAS, within the City of Del Mar there are a number of residential structures in high risk wildfire areas in the State's identified Very High Fire Hazard Severity Zone that are served by narrow roads; and

WHEREAS, Del Mar Municipal Code (DMMC) Section 10.04.070 specifies required minimum unobstructed improved road widths to ensure fire apparatus access; and

WHEREAS, the City intends to update the Community Plan Safety Element to ensure that residents living in high-risk wildfire zones may safely evacuate in times of emergencies and that emergency response equipment will have adequate access to those areas; and

WHEREAS, while the Safety Element update is being prepared it is in the interest of public safety to ensure that any new development in high-risk areas has the ability to evacuate its residents in times of public emergencies; and

WHEREAS, within the City there are sandstone bluffs and coastal bluffs that are fragile and are protected as environmental resources and potential coastal hazards in the City's certified LCP; and

WHEREAS, consistent with all residential development and the City's certified LCP, proposed ADU development near sandstone bluffs and coastal bluffs requires



specific regulation to ensure protection of the bluff and the bluff's habitat values and protection of public safety; and

WHEREAS, this ADU Ordinance includes provisions necessary to protect sensitive coastal habitats, ensure public access, maintain public coastal view sheds, provide coastal parking requirements, and protect public safety in order to harmonize the State ADU regulations with the California Coastal Act and the City's certified LCP; and

WHEREAS, the City staff engaged in extensive public outreach to encourage public participation in formulating these draft ADU regulations, which included articles posted on the City's website, multiple announcements made in the City's weekly updates, multiple announcements made during public meetings including the Design Review Board and City Council meetings; and

WHEREAS, notice of the July 10, 2023, public workshop discussion related to ADUs was posted in the Del Mar Times on June 29, 2023; and

WHEREAS, the Notice of Availability and notice of Planning Commission public hearing for the draft ADU Ordinance was posted in the Del Mar Times on August 25, 2023, and individual mailed notices were sent to all interested parties; and

WHEREAS, during the September 12, 2023 public hearing, the Planning Commission recommended the City Council adopt the Ordinance with modifications to reflect concerns raised in submitted correspondence and during public testimony that many ADUs built in the City were built simply to add value to the primary residence, are not being used for housing purposes to add to the housing rental stock as the Legislature intended, and are instead being used for home offices, recreational rooms, vacation rentals, and other uses; and

WHEREAS, the Planning Commission recommended modifications to the City Council to be responsive to the public testimony and these modifications have been incorporated into the Ordinance; and

WHEREAS, on September 18, 2023, the notice of City Council public hearing was published in the Daily Transcript and mailed notices were sent to all interested parties who have participated through the Planning Commission hearing on September 12, 2023; and

WHEREAS, additional public notice was provided on October 2, 2023, in the San Diego Union-Tribune and mailed notices were sent to all interested parties with notification of the hearing continuance from October 2 to October 16, 2023, and again on November 16, 2023, with published notice in the Del Mar Times and mailed notices to all interested parties providing notification of the City Council hearing on December 4, 2023; and



WHEREAS, on October 16, 2023, the City Council held a duly noticed public hearing, considered public testimony and written correspondence, and continued the item with direction for staff to revise the Ordinance to add a Notice of Application requirement for ADU applications and incorporate additional citywide objective standards to address parking in areas of high wildfire risk, grading/landform alteration, and other objective standards consistent with those adopted as part of the Senate Bill 9 Ordinance/LCPA; and

WHEREAS, the City's certified 6<sup>th</sup> Cycle Housing Element includes six ADU-related housing programs (Programs 2A through 2F) to promote ADUs and create incentives to encourage the use of ADUs as a strategy to provide affordable housing for moderate income and lower income households; and

WHEREAS, this Ordinance implements Housing Element Program 2F (Tiny Homes) by incorporating a definition for tiny homes and allowing tiny homes through the same ministerial approval process as ADUs thereby facilitating development of small units ranging from 150 square feet to 400 square feet in size that if developed in the City is likely to provide more affordable housing options due to the smaller size of the unit type; and

WHEREAS, adoption of this Ordinance will facilitate implementation of an incentive program in accordance with Housing Element Program 2A (Incentives to create ADUs for low income households) by incorporating provisions into the certified LCP to authorize the granting of specific planning and zoning incentives subject to approval of an Administrative Coastal Development Permit and compliance with contractual requirements between the property owner and the City, required for the applicant to be eligible for participation in the incentive program, that limit the ADU use and occupancy based on restricted income limits and rental rates for a low-income households as established annually by the State of California and require a long-term deed restriction to ensure that the ADU remains affordable; and

WHEREAS, this Ordinance establishes an ADU Amnesty Program that will facilitate implementation of Housing Element Program 2B by incorporating provisions into the certified LCP to authorize the granting of fee waivers and permit streamlining incentives subject to approval of an Administrative Coastal Development Permit and compliance with contractual requirements between the property owner and the City, required for the applicant to be eligible for participation in the program, that limit the ADU use and occupancy based on restricted income limits and rental rates for low-income households and moderate-income households as established annually by the State of California and require a long-term deed restriction to ensure that the ADU remains affordable; and

WHEREAS, the ADU Amnesty Program is being created because it is likely that there are existing ADUs in the City that were constructed without obtaining the proper



permit approvals, that some of these unpermitted ADUs were built substandard, and as a result may pose a threat to public safety and welfare; and

WHEREAS, the ADU Amnesty program is intended to encourage compliance with standard building codes and public safety requirements; and

WHEREAS, the Amnesty Program reduces the amount of permit fees and in some cases penalties to those residents that voluntarily come forward within a specified time period to correct substandard construction of defect.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Del Mar, California, based on substantial evidence in the whole of the administrative record, hereby finds and declares the following:

1. The foregoing Findings with the above stated Recitals are true and correct and are incorporated by reference into this action.
2. The City has received extensive written and oral public testimony attesting to the widespread misuse of ADUs. Such misuse is contrary to the legislative intent of ADU law.
3. The ADU Ordinance substantially complies with State ADU law, as provided in California Government Code Sections 65852.2 and 65852.22, as harmonized with the California Coastal Act and consistent with California Government Code Section 65852.2(l).
4. Within the City of Del Mar there are areas of high wildfire risk where homes are located on steep slopes and surrounded most of the year by dry and flammable vegetation. Some of these hillside areas also have narrow winding roads that serve as the only evacuation route for homes within these neighborhoods. The City is processing an update to the Safety Element in the Del Mar Community Plan to ensure that residents living in these high-risk wildfire zones may safely evacuate in times of public emergencies and that there is adequate access for emergency response personnel and equipment to reach those areas. To be responsive to these unique conditions, the City has recently prepared and approved an evacuation plan addressing these conditions, prepared appropriate mass evacuation emergency response approaches, and identified how to effectively respond to various types of emergency conditions. These combined conditions are unique to the City and there are limited options other than imposing parking requirements on all new developments where there are improved roads that are twenty feet or less in width, which will ensure compliance with DMMC Section 10.04.070. These provisions are also consistent with the public safety and welfare provisions of the California Coastal Act Chapter 3, Article 6, Section 30253(a).
5. While the citywide Safety Element update is being prepared, the City finds that it is in the interest of public safety to ensure that any new development, including



ADU development, located in high-risk areas have the ability to safely evacuate its residents in times of emergencies. Additionally, building structure separation is a critical component to ensure that fire personnel and their equipment can access structures during a fire. These building separations become even more critically important when emergency response is impeded by the City's narrow streets, or where the structures are located in high risk fire hazard hillside communities.

6. Within the City there are hundreds of existing homes located within FEMA flood zones identified by FEMA. The flood conditions in these areas, as identified by best available science, are being exacerbated by climate change and sea level rise (existing and projected). On a citywide basis, the City is addressing these flood conditions to minimize flood risk through adaptation mitigation measures. These measures are consistent with the adopted City of Del Mar Sea Level Rise Adaptation Plan (Environmental Science Associates October 2018). Currently, the City has an existing system of shoreline protection along the shoreline in the North Beach neighborhood, which has been maintained in accordance with the Beach Preservation Initiative and the Beach Overlay Zone policies and regulations in the City's certified Local Coastal Program. In addition, the City has a Sand Compatibility Opportunistic Use Program in place to facilitate sediment management and maintenance of a wide beach and is in process of preparing a conceptual plan for a living levee, vegetated berm system, to provide flood adaptation along the banks of the San Dieguito River in accordance with the City's adopted Sea Level Rise Adaptation Plan and the Coastal Act. All new development, including ADU development, must demonstrate how the proposed development will implement adaptation measures to minimize flood damage and avoid flood hazards in accordance with the City's certified LCP and the California Coastal Act Chapter 3, Article 6, Section 30253(a) (Cal. Pub. Res. Code Section 30253(a)).
7. Within the City there are eroding bluffs and unstable, fragile slopes that may pose a danger to residents building in these blufftop areas that are vulnerable to erosion and instability. The City is addressing these specific risks by requiring geotechnical reports and setback requirements consistent with existing requirements applicable to all proposed residential development on lots with steep slopes or coastal bluffs required by the City's certified LCP and the California Coastal Act Chapter 3, Article 6, Section 30253(b) (Cal. Pub. Res. Code Section 30253(b)); as well as implementation of adaptation measures in accordance with the City of Del Mar Sea Level Rise Adaptation Plan. These setback and geotechnical protection requirements are required hazard controls in the City's certified LCP that are intended to protect the public safety and welfare and apply to all new development. All new development, including ADU development, must demonstrate how the proposed development will implement adaptation measures to minimize and avoid erosion hazards in accordance with the City's certified LCP and the California Coastal Act Chapter 3, Article 6, Section 30253(b) (Cal. Pub. Res. Code Section 30253(b)).



8. Within the City there are significant sensitive coastal resources and environmentally sensitive habitat areas that are specifically protected under the California Coastal Act. ADU law specifically provides that coastal resource protections found in the California Coastal Act are not to be superseded or its effects lessened by the provisions of ADU law. Protection of these natural habitats and environmentally sensitive resources is a cornerstone of the Coastal Act found in the California Coastal Act Chapter 3, Article 6, Section 30240 (Cal. Pub. Res. Code Section 30240). Consistent with case law, the California Coastal Act, and the State's housing policies and its implementing regulations, the City has made reasonable and good faith efforts to harmonize any conflicting regulations to ensure the protection of coastal resources and to ensure the protection of public safety and welfare while furthering the housing goals of the State. The City has reasonable relied on its certified LCP, public testimony, written evidence, and the City's unique infrastructure and environmental conditions in harmonizing the State's ADU laws with the Coastal Act and the City's police powers in protecting the safety of its residents.
9. Within the City there are public scenic view corridors to coastal resources that are protected under the California Coastal Act. Consistent with the Coastal Act, these scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas. (See: Cal. Pub. Res. Code Sec. 30251). ADU law does not supersede or lessen the effect of the California Coastal Act. (Cal. Gov. Code. Sec. 65852.2(l)). As applied to all residential development in the City, an ADU development may not obstruct the public scenic and visual qualities of the City's coastal areas. To be consistent with the mandates of the California Coastal Act, building restricted easements are enforced and certain height restrictions may be placed on ADU development to ensure protection of public scenic coastal vistas.
10. Within the City there are rare and scenic trees that are native to Del Mar and protected under the California Coastal Act. On a case-by-case basis, the ADU location siting will be required to avoid impacts to these protected tree species and comply with DMMC Chapter 23.50. These coastal resource protections are consistent with Cal. Gov. Code. Sec. 65852.2(l) and these habitat value protective measures are consistent with California Coastal Act Chapter 3, Article 6, Section 30240 (Cal. Pub. Res. Code Section 30240).
11. The City's certified 6th Cycle Housing Element requires the creation of additional affordable housing stock.
12. The California Legislature made findings, declarations, and statements of intent in drafting the ADU laws. A paramount legislative finding states that ADUs "are an essential component to creating additional housing stock." The City's ADU ordinance is consistent with creating essential housing stock. During the public hearing process for this Ordinance numerous residents testified that a significant



majority of ADUs have been constructed for uses other than to serve as dwelling units; with the most common practice being to remodel existing dwelling units to access new or enhanced private views of the ocean for the existing occupants as a means to avoid the City's discretionary design review process that otherwise applies citywide. This Ordinance discourages the construction and use of ADU development for the enhancement of private ocean views, or use as home offices or recreational purposes. The intent of the City's Ordinance is to ensure that ADUs are built for dwelling purposes and to curtail the misuse of ADU law.

13. The City has considered HCD and California Coastal Commission staff comments and such comments are incorporated herein.
14. The ADU Ordinance includes provisions to harmonize ADU state law with the California Coastal Act's Chapter 3 protective provisions and the City's certified LCP. This includes specific measures to protect the public safety from environmental and infrastructure conditions that are unique to the City. The City's certified LCP has "Overlay Zones" as a means for implementing the hazard control policies in the LCP Land Use Plan in order to protect coastal resources, environmentally sensitive habitat areas, and high risk public endangerment areas. These Overlay Zones apply citywide and now by this ordinance include ADU development, including development within the Beach Overlay Zone, Bluff, Slope, and Canyon Overlay Zone, Coastal Bluff Overlay Zone, Floodplain Overlay Zone, Lagoon Overlay Zone, Open Space Overlay Zone, and the Wildland Urban Interface (WUI) Fire Hazard Severity Areas. The Overlay Zones implement the natural resource protection elements of the City's LCP as required by the California Coastal Act. The Coastal Act provides that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values. (See: Cal. Pb. Res. Code 30240). The City's LCP Overlay Zones ensure that environmentally sensitive habitat areas are protected against any significant disruption from housing projects. ADU law recognizes that these fundamental Coastal Act protections are not superseded and ensures that its effects are not lessened by ADU development provisions that may conflict with the Coastal Act. The standards for development and the coastal resource protections afforded by these Overlay Zones will equally apply to all residential development including ADU development projects.
15. As required by the Coastal Act, the Ordinance includes provisions to ensure that the existing reservoir of public parking along the shoreline will be sufficient to maintain the public's right to coastal access. Public access to the shoreline is facilitated by on-street public parking. However, on-street parking in the City is highly limited. Therefore, the City's LCP policies, as certified by the California Coastal Commission, ensure that new residential development can self-park on its property. Use of on-street parking by ADUs or other development projects in coastal parking impact areas impedes public access to the shoreline. The parking standards under the ADU law are in conflict with existing California Coastal Act coastal access policies, as implemented by the City's existing LCP. However, ADU



law does not supersede or lessen the effect of the California Coastal Act. (Cal. Gov. Code. Sec. 65852.2(l). Public roads nearest to the sea are protected for public use to gain access to the shoreline. (See: 14 CCR Sec. 13011 and California Coastal Act Section 30212(a)). Therefore, the public's right to park along public streets that are near the shoreline is preserved by implementation of this Ordinance. (See: Cal. Pub. Res. Code Sec. 30212(a)).

16. Within the City there are some roadways that are substandard in width. When on-street parking is allowed in these areas without limitation, emergency response can be impacted if emergency response vehicles and equipment cannot safely respond to local incidents. Therefore, to ensure protection of public safety along these very narrow roadways, the Ordinance ensures safe access for emergency response vehicles and access to emergency response equipment. All new residential development located in these areas must ensure adequate off-street parking for its residents. These evaluations occur on a case-by-case basis.
17. As required by the Coastal Act, the Ordinance contains provisions to ensure protection of public coastal scenic views. Similar to other residential development within the Coastal Zone, this Ordinance limits ADU development where it would impact public scenic and visual corridors to the sea. Under the Coastal Act Chapter 3, Article 6, Section 30251 states the scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting. (See: cal. Pub. Res. Code Section 30251).
18. Within the City there are sandstone bluffs and coastal bluffs that are fragile, provide habitat value, and are protected in the City's LCP as environmental resources and potential coastal hazards. ADU development near sandstone bluffs requires specific regulation, as similarly applied to all other residential development, to ensure protection of the bluff and the bluff's habitat values and protection of public safety. These sandstone bluffs and coastal bluffs are highly susceptible to erosion and resulting collapse.
19. The City's certified 6<sup>th</sup> Cycle Housing Element includes six ADU-related housing programs (Programs 2A through 2F) to promote ADUs and create incentives to encourage the use of ADUs as a strategy to provide affordable housing for moderate income and lower income households and this Ordinance facilitates implementation of the ADU-related housing programs.



20. During the Planning Commission and City Council public hearings, considerable public testimony and written evidence was presented establishing that homeowners have abused the ADU process by building ADUs for the sole purpose of enhancing private views of the ocean and adding new home office and recreational rooms. These accessory structures and uses only benefit the primary dwelling unit and are in direct conflict with the legislative intent of ADU law to create additional dwelling units and a net-increase in California's housing stock that can accommodate additional households and provide new housing choices including lower cost dwelling units. Based on substantial evidence in the record, the ministerial permit process provided by State ADU law has been misused by property owners in the City of Del Mar to build ADUs for the sole purpose and benefit of the primary dwelling unit without making new housing options available. To ensure that ADUs comply with the State's legislative intent, ADUs must be developed as new dwelling units and used for dwelling purposes.
21. The ADU Amnesty Program is being created because it is likely that there are existing ADUs in the City that were constructed without obtaining the proper permit approvals, that some of these unpermitted ADUs were built substandard, and as a result may pose a threat to public safety and welfare. The Amnesty Program reduces the amount of permit fees and in some cases penalties to those residents that voluntarily come forward within a specified time period to correct substandard construction of defects.
22. This Ordinance incorporates provisions into the certified LCP to authorize the granting of fee waivers and permit streamlining incentives subject to approval of an Administrative Coastal Development Permit and compliance with contractual requirements between the property owner and the City, required for the applicant to be eligible for participation in the respective program, that limit the ADU use and occupancy based on restricted income limits and rental rates for low-income households and moderate-income households as established annually by the State of California and require a long-term deed restriction to ensure that the ADU remains affordable.
23. Where there are direct conflicts between ADU law and the California Coastal Act, the City has either harmonized the conflicts or ensured the protections afforded to coastal resources granted by the Coastal Act as further required by the California Government Code Sec. 65852.2(l).
24. The City of Del Mar Local Coastal Program as certified by the California Coastal Commission is incorporated by reference and is used herein to harmonize the State's ADU laws in manner so as not to supersede or lessen the effects of the California Coastal Act and its coastal resource protections.

NOW THEREFORE, BE IT FURTHER RESOLVED, the City Council of the City of Del Mar, California hereby ordains as follows:



**SECTION ONE:** That DMMC Section 30.04.190 ("T" Words and Phrases Defined) be amended as follows:

A. through C. [No change to *Tandem Parking Space* through *Temporary Enclosure*]

D. *Tiny Home* means a small accessory dwelling unit with at least 150 square feet of interior living space that meets all of the following criteria: a maximum of 400 square feet, installed on a foundation, and designed for independent living that has separate facilities for cooking, sleeping, and sanitation, including connections to water and sewer utilities.

E. [Modify order of *Trailer Coach* through *Trellis* to be sections E. through H.]

**SECTION TWO:** That DMMC Section 30.19.030 Medium Density Mixed Residential-South (RM-South Zone) be amended as follows:

### **30.19.030 Allowable Uses**

The allowable uses in the RM-South Zone are:

- A. In conformity with density area and other development standards required by the RM-South Zone, and use that is allowed in the RM-East, RM-West or RM-Central Zones.
- B. A duplex with attached dwelling units, or with two unattached dwelling units where design constraints make attachment impractical.
- C. Multiple dwelling units.
- D. Boardinghouses and lodging houses.
- E. Licensed rest homes.
- F. Fraternity and sorority houses, except those where the chief activity is a service customarily carried on as a business.
- G. A Small Community Care Facility on each building site.

**SECTION THREE:** That DMMC Section 30.19.040 Medium Density Mixed Residential-South (RM-South Zone) be amended as follows:

### **30.19.040 Accessory Uses**

Accessory uses that are lawful in the RM-East, RM-West or RM-Central Zones may be established in the RM-South Zone, including Accessory Dwelling Units in accordance with Chapter 30.91.



**SECTION FOUR:** That DMMC Section 30.21.030 Medium Density Mixed Residential-Central (RC Zone) be amended as follows:

**30.21.030 Allowable Uses**

The following uses are allowable in the RC Zone:

- A. Any use allowable in the R2 Zone; provided, however, that at least 60 percent of the floor area, exclusive of parking, shall be for such R2 zoned use.
- B. Any primary use (not requiring a conditional use permit) allowed in the CC Zone; provided, however, that not more than 40 percent of the floor area, exclusive of parking, shall be for such CC zoned use.

**SECTION FIVE:** That DMMC Section 30.21.040 (RC Zone) be amended as follows:

**30.21.040 Accessory Uses**

- A. Accessory buildings and uses customarily incidental to the allowable uses, including private garages and carports.
- B. Off-street parking for a permitted use.
- C. A licensed Family Child Care Home within an occupied single dwelling unit per California Health and Safety Code Section 1596.70.
- D. Accessory Dwelling Units in accordance with Chapter 30.91.

**SECTION SIX:** That DMMC Chapter 30.91 (Accessory Dwelling Units) be repealed and replaced with the following:

**30.91.010 - Purpose**

The purpose of this Chapter is to provide regulations and procedures for the establishment of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JrADUs) on lots zoned to allow single unit and multi-unit residential uses which include a proposed or existing dwelling in accordance with California Government Code Sections 65852.150, 65852.2, 65852.22, and without superseding or in any way altering or lessening the effect or application of the California Coastal Act of 1976 (Division 20 commencing with Section 3000) and the City's Local Coastal Program. Should this Chapter conflict with existing State law or subsequent amendments then State law will prevail over the terms of this Chapter.



**30.91.020 Zones Where Accessory Dwelling Units and Junior Accessory Dwelling Units are Permitted**

- A. An Accessory Dwelling Unit (ADU) is permitted subject to the development regulations in Sections 30.91.040 and 30.91.060, on any lot that is zoned to allow residential or mixed use including the Carmel Valley Precise Plan (permitted only on residential lots 3-9, 11-17, 20-29) and other Specific Plan zones that have been developed or are proposed to be developed with at least one or more residential units.
- B. A Junior Accessory Dwelling Unit (JrADU) is permitted within the walls of an existing or proposed single dwelling unit, including an attached garage, and is subject to the development regulations in Section 30.91.050. JrADUs are permitted on property when located on a lot within one of the following single dwelling unit zones:
  - 1. Very Low Density Residential Zone (R1-40)
  - 2. Modified Low Density Residential Zone (R1-14)
  - 3. Low Density Residential Zone (R1-10)
  - 4. Low Density-Beach Residential Zone (R1-10B)
  - 5. Medium Density Single-Family Residential Zone (R1-5)
  - 6. Medium Density Single-Family Residential Zone-Beach (R1-5B)
  - 7. Carmel Valley Precise Plan Specific Plan (CVPP), Residential lots 3-9, 11-17, 20-29
- C. Tiny homes are permitted on any lot that allows an ADU. A tiny home may also be developed in additional non-residential zones if deed restricted affordable for a lower income household for a term of at least 30 years.
- D. Development of an ADU, JrADU, or Tiny Home pursuant to Chapter 30.91 is not considered to exceed the allowable density of the parcel on which it is located.

**30.91.030 Permits and Processing of Accessory Dwelling Units and Junior Accessory Dwelling Units**

- A. All Accessory Dwelling Units and Junior Accessory Dwelling Units shall comply with applicable state and local building codes and shall require approval of a building permit and Administrative Coastal Development Permit as applicable in 30.91.030.E. The City shall ministerially approve or disapprove a complete building permit application for an ADU/JrADU in compliance with time periods established by State law. If the City disapproves an application for an ADU or JrADU, the City



shall return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.

1. ADU Submittal Requirements.

In addition to the general application and permit fees for planning and engineering review as applicable, the applicant shall submit the following as applicable to demonstrate compliance with Section 30.91.040 to the satisfaction of the Planning and Community Development Director:

- a. Site Plan: A site plan with proposed setbacks fully dimensioned for all existing and proposed structures on the project site, and calculations indicating the square footage of all structures on the lot.
  - (i) Calculation of the ADU size shall include all interior floor space within the surrounding exterior walls of the ADU as calculated from the inside face of the wall studs.
  - (ii) The site plan shall also depict all protected trees (Monterey Cypress and Torrey Pine Species) on the lot and identify a tree canopy dripline protection zone for each protected tree on-site to ensure protection during construction.
  - (iii) Additional site plan detail, per the City's ADU checklist on file with the City, shall be included for engineering review of any application to construct an ADU that would be either attached to the primary dwelling unit or constructed as a new detached structure. This includes plan details for proposed development that includes partial or full demolition of an existing structure on-site to accommodate the ADU, which may include partial demolition of the existing residence or demolition of an existing garage, carport, or other accessory structure.
  - (iv) In the Coastal Bluff Overlay Zone, a proposed ADU must comply with the recommendations of a geotechnical report in accordance with Chapter 30.55 when sited in a new structure or within a non-habitable space that would be converted to habitable space.
  - (v) Except where required per Section 30.91.030(A)(1)(a)(iv), engineering review is not required if the ADU would be located within an existing primary dwelling unit or existing accessory structure.



- b. The plans shall include building cross sections taken through the structure and adjacent grade in at least two directions and elevations with proposed height fully dimensioned showing all facade openings and exterior finishes. Elevations and sections shall indicate the line of existing and proposed grade as necessary to depict any grading to occur as a result of the ADU development.
- c. A floor plan to identify the exterior entry, number of bedrooms, fully functioning bathroom, and kitchen for the ADU to demonstrate compliance with the requirements for a separate exterior entry compliant with the maximum size allowance, and consistency with the Government Code Section 65852.2(j) definition of ADU that requires an ADU include permanent provisions for living, sleeping, eating, cooking, and sanitation. This is typically demonstrated by identifying that the ADU includes a bathroom and a fully functioning kitchen, which includes a fully functioning cooking area (and not merely a hot plate) and includes other standard kitchen appliances, food storage cabinets, a countertop/food preparation area proportional to the size of the ADU, and a fully functioning sink.
- d. Information regarding available water and sewer utility easements, services, and connections, and whether the existing primary residence has an automatic residential sprinkler system.
- e. Standard notes printed on the construction plans prior to building permit approval, including the following statements:
  - (i) The ADU may be leased but shall not be sold separate from the primary dwelling unit, except that a qualified non-profit affordable housing organization per Government Code Section 65852.26 may sell a deed restricted ADU to an eligible low-income owner.
  - (ii) Until December 31, 2024, the City will not require the property owner to occupy the primary unit or the ADU for newly created ADUs. Effective January 1, 2025, the property owner shall reside on the property in either the primary dwelling unit or in the ADU.
  - (iii) For lots that have both an ADU and JrADU, the property owner shall reside on the property in either the primary dwelling unit, in the ADU, or in the JrADU.
  - (iv) If the ADU is rented or leased, the term for rental shall be the greater of 30 consecutive days, except where the ADU is located in zones that allow for commercial land uses.



- f. A certification of height, setback, and square footage compliance shall be submitted prior to framing inspection.
- g. A construction-phase parking and equipment/materials storage plan.
- h. If applicable, a Federal Emergency Management Agency (FEMA) elevation certificate shall be provided at initial application submittal, and updated (if necessary) prior to building permit issuance. An as-built elevation certificate will also be required prior to final inspection and occupancy.
- i. Any additional information as necessary to demonstrate the proposed ADU meets the criteria for ministerial approval in Section 30.91.040.

2. JrADU Submittal Requirements.

In addition to the general application and permit fee, the applicant for a JrADU shall submit the following as applicable to demonstrate compliance with Section 30.91.050 to the satisfaction of the Planning and Community Development Director:

- a. A site plan with setbacks fully dimensioned for all existing and proposed structures on the project site to demonstrate the site is, or will be, developed with a single dwelling unit; and that identifies any existing or proposed ADUs on the lot
- b. A floor plan to demonstrate compliance with Section 30.91.050 requirements for an efficiency kitchen, separate exterior entry, and the bathroom the JrADU will have access to.
- c. In the Coastal Bluff Overlay Zone, a geotechnical report is required in accordance with Chapter 30.55 for a proposed JrADU in a new structure or within a non-habitable space that would be converted to habitable space.

B. The following shall apply if the permit application is submitted for concurrent processing to create a new primary dwelling unit:

- 1. The application for the ADU or JrADU shall be submitted for review prior to consideration of the proposed primary dwelling unit in a public hearing.
- 2. The proposed location of the ADU or JrADU shall be depicted on development plans for the proposed primary dwelling unit.
- 3. The City may delay acting on the ADU or JrADU permit application until the City acts on the permit application to create the new primary dwelling unit.



However, the ADU or JrADU application will be processed without discretionary review or public hearing.

4. The decision maker on the primary dwelling unit is precluded from considering the pending ADU or JrADU as part of the discretionary review or hearing for the primary dwelling unit.
  5. If the applicant requests a delay, the 60-day time period for review and approval set forth in Section 30.91.030(A) shall be tolled for the period of the delay.
- C. Prior to development or occupancy of an ADU or JrADU, the applicant shall obtain all construction-related permits as applicable pursuant to Del Mar Municipal Code Chapter 23.04 (Building Construction General Provisions). ADUs or JrADUs located in High Fire Hazard Severity Zones shall comply with all applicable Building Code standards for those zones.
- D. Notwithstanding the provisions of the Del Mar Municipal Code, development of an ADU designed in accordance with Section 30.91.040 or a JrADU designed in accordance with Section 30.91.050 shall be exempt from the requirement to obtain a discretionary permit in all cases below, except where it requires an Administrative Coastal Development Permit, pursuant to Section 30.91.030.E
1. Exempt from a Design Review Permit (Chapter 23.08) in all zones including the Carmel Valley Precise Plan and Specific Plan zones.
  2. Exempt from a Land Conservation Permit (Chapter 23.33) for all grading proposed within the development footprint for the ADU structure; however, the requirement for an excavation or grading permit in accordance with Chapter 23.32 still applies. A Land Conservation Permit may be required through a separate approval process for any excavation and grading activities proposed outside of the ADU development footprint where such grading and excavation is not required for ADU occupancy.
  3. Exempt from a Floodplain Development Permit (Chapter 30.56) where located in the Floodplain Overlay Zone and the following apply:
    - a. ADU will be located entirely within the walls of an existing habitable structure or within existing non-habitable space located at or above the base flood elevation that is converted to habitable space for the ADU; or
    - b. ADU will be located in a structure that is designed as follows:
      - (i) The lowest floor (including basement) will be elevated to or above the base flood elevation plus one foot;



- (ii) The structure will be anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - (iii) Construction materials will be resistant to flood damage; and
  - (iv) All plumbing, electrical, heating, ventilation, and air conditioning equipment will be designed to prevent water from entering or accumulating within the components during conditions of flooding.
- 4. Exempt from a Conditional Use Permit (Chapter 30.74) where:
  - a. Located in the Bluff, Slope and Canyon Overlay Zone, and the ADU will be set back at least 20 feet from the top of a steep slope and at least 10 feet from the bottom of a steep slope per Section 30.52.070; or
  - b. Located in the Coastal Bluff Overlay Zone, and the ADU will be constructed primarily above grade, and set back at least 40 feet from the top edge of a coastal bluff per Section 30.55.080.
- E. The California Coastal Act requires issuance of an Administrative Coastal Development Permit implemented in accordance with DMMC Chapter 30.75, to harmonize State Housing law with the Coastal Act and ensure protection of coastal resources as follows:
  - 1. California Government Code section 65852.2 (I) provides that the Accessory Dwelling Unit statutes do not supersede or in any way alter or lessen the effect or application of the California Coastal Act, except that the City shall not be required to hold public hearings for Coastal Development Permit applications for ADUs.
  - 2. The following proposed ADU or JrADU development is exempt from an Administrative Coastal Development Permit where it meets all of the following:
    - a. An ADU or JrADU created through conversion of entirely existing habitable space; and
    - b. Consistent with other residential development in the City, the ADU or JrADU is not located in any of the following Overlay Zones: Floodplain, Beach, Lagoon, Coastal Bluff, or Bluff, Slope, and Canyon; and
    - c. Consistent with other residential development in the City, that the ADU or JrADU application is not in a location subject to the permit



appeal authority of the Coastal Commission as defined by DMMC Section 30.75.030.

3. An Administrative Coastal Development Permit in accordance with Section 30.75.080 shall be obtained for an ADU or JrADU that does not meet the exemptions listed in Section 30.91.030(E)(2).
4. Where an Administrative Coastal Development Permit is required by Section 30.91.030(E)(3), it shall be processed in accordance with the following procedures:
  - a. Consistent with the public participation provisions found in the California Coastal Act and the City's certified LCP, a Notice of Application informing the public of the filing of an application for an Administrative Coastal Development Permit for an ADU shall be posted at the project site on a notice card provided by staff of the City of Del Mar Department of Planning and Community Development. The notice of application shall advise interested persons that plans are available for public review at Del Mar City Hall. The notice, however, will stipulate that the application is required to be administratively approved by the Department of Planning and Community Development and that no public hearings will be permitted.
  - b. In order to approve the ADU, the Planning and Community Development Director shall make a finding that the proposed development is consistent with the requirements of the certified Local Coastal Program, and where applicable, the public access and recreation policies of the Coastal Act, except that no public hearing shall be required.
  - c. A Notice of Administrative Coastal Development Approval stating that the Coastal Development Permit has been approved shall be posted at City Hall and on the City's website, and shall be mailed within five working days of the final action as follows:
    - (i) Notice shall be mailed to all owners of real property within 300 feet of the exterior boundaries of the property, which is the subject of the hearing with ownership as identified on County Tax Assessors' rolls; and to all occupants of property within 100 feet of the exterior boundaries of the property which is the subject of the application.
    - (ii) Notice shall be sent via U.S. Postal Service to the Executive Director of the California Coastal Commission.



- (iii) The content for the notice of final action by the City shall be in accordance with Section 30.75.120(B)(1-5) and shall contain the date of the decision.
  - d. Once a final decision of approval or denial is issued by the Planning and Community Development Director, the notice of final action shall be provided within five (5) working 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.
  - e. If the ADU qualifies as appealable development pursuant to Chapter 30.75, the Planning and Community Development Director's decision to approve a Coastal Development Permit may be appealed to the Coastal Commission within ten (10) working days in accordance with Section 30.75.110(A) and (B).
- F. ADUs or JrADUs issued permits in accordance with Chapter 30.91 shall expire and become null and void two years after the date of issuance, unless a certificate of occupancy has been issued by the Building Division.
- G. The City shall maintain a record of all ADUs and JrADUs issued permits for reporting to the State of California.
- H. The construction of an ADU shall not constitute a Group R residential occupancy change as described in Section 310 of the California Building Code (Title 24 of the California Code of Regulations), unless the Building Official finds that the construction of the accessory dwelling unit could have a specific, adverse impact on public health and safety. This clause does not apply when changing the occupancy code of a space that was uninhabitable space or was only permitted for nonresidential use and was subsequently converted for residential use.
- I. Prior to issuance of a building permit for an ADU or JrADU on private property, the owner shall record a deed restriction with the County Recorder and file the recorded deed restriction with the City, acknowledging the applicable use limitations that shall run with the land. The deed restriction shall include information regarding the sale, occupancy, and rental of the unit, consistent with State Law.
- J. All dwelling units that meet the definition of a Tiny Home in Section 30.04.190(D) shall be processed as an ADU in accordance with this Chapter.

### **30.91.040 Accessory Dwelling Unit Development Regulations**

- A. An Accessory Dwelling Unit (ADU) that is designed to meet all of the requirements in Section 30.91.040, and Section 30.91.060 for lots with multiple dwelling units, shall be issued a permit in accordance with Section 30.91.030.



- B. A lot with an existing or proposed single dwelling unit is permitted to develop a maximum of one ADU (in compliance with Section 30.91.040) and a maximum of one JrADU (in compliance with Section 30.91.050) per lot. The ADU may be created within the space of a primary single dwelling unit (including conversion of an attached or detached garage), as an addition to a primary single dwelling unit, within a structure (new or conversion of existing space) that is detached from a primary single dwelling unit, or attached to an existing detached garage, in compliance with one of the following:
1. One ADU or JrADU within the space of a primary single dwelling unit:
    - a. A maximum of one ADU or JrADU is permitted within the walls of a proposed or existing primary single dwelling unit, including an attached or detached garage. Development of the ADU or JrADU shall not expand beyond the physical dimensions of the existing structure, except as necessary to accommodate ingress or egress through a maximum expansion of 150 square feet beyond the physical dimensions of the existing structure.
    - b. If an ADU is developed under Section 30.91.040(B)(1)(a), then no JrADU or additional ADUs shall be allowed where a previous ADU or JrADU was permitted in accordance with section (a) in the above.
    - c. If a JrADU is developed within the footprint of a primary single dwelling unit, including conversion of an attached garage, then a maximum of one detached ADU (one converted detached structure or new ADU structure) shall be permitted on the lot in addition to the JrADU in accordance with Section 30.91.040(B)(3).
  2. One ADU attached to a primary single dwelling unit:
    - a. An attached ADU involves the addition of square footage to a primary single dwelling unit. The attached ADU shall be constructed as part of the overall primary single dwelling unit and must share a common wall with the primary single dwelling unit.
    - b. If an attached ADU is developed, then no JrADU or additional ADUs shall be permitted on the property.
  3. One Detached ADU (new structure or conversion of existing structure):
    - a. There shall not be more than one detached ADU per lot.



- b. No additional ADUs shall be permitted on the property, except that one JrADU shall be permitted within the walls of the primary single dwelling unit, including conversion of an attached garage, in accordance with Section 30.91.040(B)(1). A JrADU is not permitted within a detached structure.
  - c. The detached ADU may be developed as a new structure or through conversion of an existing detached accessory structure.
  - d. If necessary to accommodate ingress and egress, conversion of an existing accessory structure can include an addition of up to, but not exceeding, 150 square feet beyond the physical dimensions of the existing structure. This provision applies even where the existing accessory structure exceeds the maximum allowable square footage for an ADU.
- 4. Attachment to an Existing Detached Garage:
  - a. An ADU is permitted to be attached to an existing garage, which can include either an attached or detached garage. An ADU cannot be attached to any other existing accessory structures.
  - b. If an attached ADU is developed, then no JrADU or additional ADUs shall be permitted on the lot.
- C. If the proposed ADU would be located in a designated historic district or on a property that is listed in a Register of Historic Resources (local, state, or national), then the applicant must demonstrate that the design of the proposed ADU, including exterior finishes, windows, access doors, and rooflines, is consistent with the Secretary of the Interior Standards for preservation of historic resources.
- D. The ADU shall be designed and operated in compliance with the regulations of the zone, except as otherwise specified in this Chapter, as a residential use dwelling unit that is subordinate to the primary dwelling unit on the property. One primary residential unit shall be designated on a lot which an Accessory Dwelling Unit or Junior Accessory Dwelling Unit is permitted.
  - 1. The ADU shall be designed to comply with the Government Code Section 65852.2(j) definition of ADU by including permanent provisions for living, sleeping, eating, cooking, and sanitation. This is typically demonstrated by identifying that the ADU includes a fully functioning: Bathroom consisting of a toilet, sink, a bathtub or shower; and a kitchen. The kitchen includes a cooking appliance (not a hotplate) refrigeration and other appliances, food storage cabinets, and a countertop or similar food



preparation area. The kitchen area is to be proportional to the size of the ADU.

2. The ADU shall be designed to comply with the California Building Code and Title 24 requirements for solar installation, if the ADU would be located within a new structure. Only newly constructed, non-manufactured, detached ADUs are subject to the Energy Code requirement to provide solar panels. The solar panels may be installed on the ADU or on the primary dwelling unit.
  3. The ADU shall have a separate address and mailbox from the primary dwelling unit, which must be requested and coordinated with the City.
  4. All new residential development must provide adequate access for emergency response equipment and personnel to ensure public safety for its residents. Consistent with fire protection access requirements applicable to all residential development in the City, a minimum of six feet between any buildings shall be maintained.
  5. In accordance with Section 30.91.030(I), the owner shall record a deed restriction with the County Recorder and file the recorded deed restriction with the City, acknowledging the applicable use limitations that shall run with the land. The deed restriction shall include information regarding the sale, occupancy, and rental of the unit, consistent with State Law.
- E. The ADU may be rented but shall not be sold or conveyed separately from the primary dwelling unit on the property, except that the City or qualified non-profit corporation per Government Code Section 65852.26 may sell a deed restricted ADU to an eligible low-income owner.
- F. If rented, the term for rental of an ADU in a residential zone shall be for a term longer than 30 consecutive days per Government Code Section 65852.2(e)(4).
- G. In accordance with California Government Code Section 65852.2(c)(2)(C), the City shall accommodate an ADU at least 800 square feet in size, which is also known as the “universal” ADU size provision. If the size of a proposed ADU exceeds 800 square feet, the remaining square footage beyond 800 square feet shall be subject to review against the applicable Floor Area Ratio (FAR) and lot coverage development standards of the zone. Additionally, should the combined total size of a proposed ADU greater than 800 square feet and the primary residence exceed the maximum FAR or lot coverage allowed for the site location, then the primary residence shall be required to reduce its square footage accordingly so as to preserve the ability to build at least an 800 square foot ADU. For the purpose of this section:



1. The interior floor space within the surrounding exterior walls of the ADU (calculated from the inside face of wall studs) shall not exceed 850 square feet in size, or 1,000 square feet maximum if the ADU has more than one bedroom.
2. A proposed, attached ADU shall be subject to a maximum size of 50 percent of the habitable space of the primary dwelling unit.
3. All interior floor space of the ADU shall count towards the maximum ADU size regardless of whether or not it meets the City's definition of gross floor area or qualifies for exclusion from the calculation of bulk floor area per DMMC Chapter 30.72.
4. Bedroom shall be defined as an enclosed space within a dwelling unit that is designed or could be used for sleeping and has or is designed to have a door permitting complete closure and separation from kitchen, living room, and hallway areas.
5. The application of 50 percent size limitation to an attached ADU is regardless of bedroom count for that ADU. The total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the primary dwelling or 800 square feet if the primary dwelling is less than 1,600 square feet.
6. If a detached garage is demolished and converted to an ADU, the sizes listed in Section 30.91.040.G shall apply.
7. In order to comply with the mandates of the California Coastal Act, the City is required to protect coastal access and coastal resources, which may require modification of the proposed ADU location and size to demonstrate conformity. The City shall accommodate a proposed ADU meeting the universal size provision of at least 800 square feet in size, unless the California Coastal Act supersedes this minimum size requirement due to impacts to protected coastal resources or otherwise impedes public access to the coast. In such a case, the City will prepare written findings and, where applicable, mitigation measures to alleviate such impacts as necessary to accommodate a proposed ADU at least 150 square feet in size that meets the definition of an efficiency unit as defined per California Government Code Section 65852.2(c)(2)(A).
8. The proposed conversion or relocation of square footage from the footprint of an existing ADU to another location on the lot shall be subject to the maximum floor area ratio, lot coverage, and permit process of the base zone(s), unless the proposed development is necessary to accommodate development of a proposed ADU 800 square feet in size.



- H. An ADU is not permitted within a building-restricted easement location.
- I. The ADU shall comply with the following objective design standards, unless the design standards prohibit construction of an 800 sq. ft. ADU, notwithstanding Section 30.91.040(G)(7):
  - 1. Wall and roof planes on each elevation must be varied with at least one projection, offset, or recess of the building (of at least one foot in depth) for each 20 feet.
  - 2. Walls and windows shall be located so that sight lines maximize privacy and avoid direct views into neighboring homes. Glass walls (any wall plane consisting of more than 75 percent opaque or transparent glazed surface) that are visible from adjacent neighboring homes shall be prohibited. Sizing and placement of windows shall be offset to stagger the window placement in relation to the adjacent neighbor's windows. When staggering or offset of the window cannot be achieved, the project shall utilize obscured or opaque window glass, clerestory windows, or windows with higher sills. Installation of skylights shall be tinted to avoid interior light transmission.
  - 3. Rooftop decks, including those accessed from a second story ADU, are prohibited.
  - 4. Where provided, fireplaces and chimneys shall be attached to the ADU and shall be no higher than the minimum height required per the California Building Code and shall not project into any required yard setback area.
  - 5. The ADU, including roof eaves, cantilevered portions or overhangs shall not encroach into the required four (4) foot side or rear setbacks.
  - 6. New detached or attached accessory dwelling units shall be constructed using the same architectural style, roof pitch, exterior building materials, paint colors and finishes as the primary unit, including but not limited to siding, windows, doors, roofing, light fixtures, hardware, and railings, if the accessory dwelling unit is attached to or located within twenty (20) feet of the primary dwelling unit.
  - 7. The foundation and underside of new detached or attached ADUs shall be fully screened with compatible materials and colors as the primary unit.



8. Outdoor speakers, televisions or other permanent electronic entertainment features with mechanically or electronic generated noise are prohibited.
9. An exterior wall heating, ventilation, or air conditioning (HVAC) unit is permitted for an ADU if it maintains all required minimum setbacks applicable to the ADU. Consistent with other residential development in the City, the HVAC shall be fully screened from the public right-of-way and adjacent properties and compliant with the Chapter 9.20 Noise Regulations.
10. Consistent with screening requirements for other residential development:
  - a. Roof penetrations such as stacks, vents, and other roof-mounted equipment shall be located away from view from the public right-of-way. All flashing, sheet metal, vents and pipe stacks shall be painted to match the adjacent roof or wall material.
  - b. Equipment such as backflow preventers shall be screened from public view if located in a street yard setback.
  - c. All ground mounted mechanical equipment shall be completely shielded to eliminate noise and shall be screened from view by adjacent properties by use of a wall, view-obscuring fencing and/or landscaping, or enclosed within a building. Screening walls shall be designed to be architecturally consistent with the building design and materials.
  - d. Areas for trash containers shall be incorporated into the building design and located within a garage or fully screened from public view with walls and landscaping and secured with a lid if the top of the trash bin is not fully covered by the walls. Trash container storage shall be located at the rear or the interior side yard of a property.
11. Consistent with standards for other residential development, all fences and walls, including retaining walls, are subject to the following objective standards in compliance with Section 30.86.090. Fences and walls that are not part of the ADU structure or necessary to demonstrate compliance with the applicable ADU development standards require permit review and processing in accordance with applicable Municipal Code standards.



- a. Retaining walls outside of the building footprint shall be at least four feet from a building wall and shall be fully landscaped and/or provide for a walkway adjacent to the home.
  - b. The distance between two terraced retaining walls shall be, at a minimum, the average height of the two walls. Retaining walls shall not exceed four feet in height. The horizontal area between two retaining walls shall be vegetated.
  - c. Retaining walls, block walls, and planters shall be designed with stone, native, or natural appearing materials such as, but not limited to, split face or stone veneer and shall not be unfinished concrete masonry units (CMU) block.
  - d. Fences and walls shall follow the natural site topography.
  - e. Retaining walls shall be earth tone colors that match the surrounding natural hues of the hillsides. Use of colors that contrast with the surrounding natural terrain such as white are prohibited. Earth tone is defined as a color scheme that draws from a color palette of browns, tans, warm grays, and greens. The colors in an earth tone scheme are muted and flat in an emulation of the natural colors found in dirt, moss, trees, and rocks.
  - f. Any perimeter fencing on hillside properties shall be visually open with the use of split rail, picket post, or cable.
  - g. Chain-link fencing is prohibited unless it can be fully screened from view with landscaping or is not visible for the public right-of-way or adjacent properties. If chain-link is proposed, it shall be vinyl coated in black or other dark color that matches the natural terrain.
12. Consistent with hardscape and driveway requirements for other residential development:
- a. Hardscape for access to parking areas shall have one unobstructed, permanently surfaced driveway not less than 10 feet in width and shall not exceed a total maximum of 20 feet along all abutting street lines. The finished grade of a new driveway for the ADU shall not exceed 15 percent, unless designed with Portland Cement Concrete (PCC) surface that incorporates a deep broom finish perpendicular to the direction of travel. Maximum grade shall not exceed 20 percent.



- b. Line of sight visibility shall be retained for public safety in accordance with Engineering standards. No wall, structure, plant material, or other object that exceeds 42 inches shall be erected or placed within a triangular area formed by measuring 10 feet from an intersecting driveway, street, or alley in a manner as to obstruct or impede vision for automobiles.
  - c. Existing vehicular access and curb cuts shall remain in the existing locations and may be redesigned only if this standard would preclude the construction of an ADU less than 800 square feet.
  - d. Circular driveways are prohibited.
- 13. In accordance with the certified Local Coastal Program, new construction shall retain native landscaping and vegetation where possible. The ADU shall not be located within the tree canopy dripline of an environmentally "Protected Tree" native to Del Mar (Monterey Cypress and Torrey Pine Species). If ADU development within the tree canopy dripline protection area for a Protected Tree is necessary to accommodate an 800 square foot ADU, the owner would be subject to compliance with applicable tree removal permit procedures, mitigation, and/or penalties as identified in the City's Tree Ordinance in DMMC Chapter 23.50. All proposed landscaping for the ADU shall comply with DMMC Chapter 23.60 (Water Efficiency Landscape Ordinance) and any landscape plan requirements applicable to the lot at the time of application.
- J. The ADU shall have a separate exterior entry from the primary dwelling unit.
  - 1. The ADU exterior entry shall not be required to have a pathway connection to the street.
  - 2. Consistent with other residential development in the City, if located in the Floodplain Overlay Zone, and the ADU is required to be elevated for compliance with applicable floodplain standards, the entryway to the ADU shall be limited to the minimum width for entry access as required by the California Building Code. Should an ADU application request a greater design width than the minimum required for exterior entry per the California Building Code, then approval of an Administrative Design Review Permit for the proposed entry design shall be required in accordance with DMMC Section 23.08.035.
- K. The following identifies the maximum building height for construction of an ADU:



1. The maximum building height of a detached ADU shall not exceed 16 feet above grade.
2. Notwithstanding Section 30.91.040(K)(1), on a lot that is within one-half mile walking distance of a major transit stop or a high-quality transit corridor, as defined in Section 21155 of the Public Resources Code, the maximum building height of a detached ADU, shall not exceed 18 feet above grade.
3. Attached ADUs must share a common wall horizontally with the primary dwelling unit. The maximum height for attached ADUs in single dwelling unit zones is as follows:
  - a. For consistency with local conditions and the certified LCP, attached ADUs in single dwelling unit zones shall be proposed at the first story level if buildable area is available on the first story level of the lot. The maximum building height for an ADU attached horizontally sharing a common wall with the existing primary dwelling unit at the first story level is 16 feet.
  - b. Attached ADUs may be proposed at a second story level only if there is not buildable area available on the lot and if necessary to accommodate an ADU up to 800 square feet on the lot as an alternative that minimizes potential impacts to the greatest extent in compliance with the certified LCP. The maximum building height for a proposed attached ADU that horizontally shares a common wall with the primary dwelling unit at the second story level shall not exceed 25 feet above grade, or the base zoning requirements, whichever is lower, and in no case shall exceed two stories.
4. Consistent with other residential development in the City and for the purpose of Chapter 30.91, height shall be measured in accordance with DMMC Section 30.04.080(A), except on those parcels that fall entirely or partially within the special flood hazard areas identified on the 2019 FEMA Flood Insurance Rate Map (FIRM), or its updated versions, where the height of a new ADU structure shall be measured from the required base flood elevation. The ADU shall not exceed the maximum height limitation of the applicable zone.
5. Within the Bluff, Slope, and Canyon Overlay Zone, the 14-foot maximum building height of the Overlay Zone shall apply in accordance with the provisions stated above, for consistency with the certified Local Coastal Program.



- L. Exterior lighting shall be limited to the minimum necessary for compliance with California Building Code requirements. Consistent with other residential development, all outdoor lighting of an ADU shall be fully shielded, a maximum of 2700 Kelvin, and directed downward and away from neighboring properties and/or public rights-of-way and shall be certified Dark Sky Friendly by the Fixture Seal of Approval program of the International Dark-Sky Association. All exterior lighting shall be equipped with shut off controls or sensors, timers, or motion detectors. Shielded up-lighting and fixtures with an adjustable aiming angle are prohibited.
- M. A side and rear setback of four (4) feet shall be required for a new ADU structure, except as follows:
  - 1. An existing legal non-conforming structure, such as a garage or accessory building, may be converted to an ADU and maintain the non-conforming setback, where the structure complies with the building and safety standards of the California Building Code and California Fire Code and the minimum setbacks specified in Section 30.91.040(M)(3).
  - 2. Conversion of an existing living area or accessory structure to an ADU, that maintains the same location and dimensions of the structure, does not require additional setback requirements.
  - 3. A new ADU structure shall comply with all street fronting setbacks of the applicable zone to provide for fire equipment access, unless necessary to accommodate placement on the property of an 800 square foot ADU, notwithstanding Section 30.91.040(G)(7). This regulation shall also apply to through lots, regardless of any relinquished vehicular access.
  - 4. Newly constructed ADUs that abut an alley may use half the width of alley for purposes of setback calculation.
  - 5. In all cases, including the conversion of non-habitable, legal non-conforming structures noted in Section 30.91.040(M)(1), the ADU shall comply with Coastal resource protections that require the following additional setback requirements:
    - a. The required minimum coastal bluff setback in the Coastal Bluff Overlay Zone.
    - b. The required minimum Beach Preservation Initiative setback in the Beach Overlay Zone.
    - c. The required minimum setback in the Bluff, Slope, and Canyon Overlay Zone.



- d. Any minimum setbacks required to protect wetlands, wetland habitat, steep slopes, and environmentally sensitive habitat or related area buffers.
  - e. The minimum interior side, street side, and rear yard setbacks required by the applicable zone, if necessary to protect public scenic views in compliance with the certified Local Coastal Program.
- N. The parking requirements for ADUs are provided in Section 30.91.040(N) and (O). In order to ensure the continuation of public access to coastal resources, where an existing garage, carport, or covered parking, is demolished or converted to an ADU, replacement off-street parking shall be required and all required off-street parking for the primary dwelling unit shall be maintained or replaced on-site.
  - 1. The replacement parking may be covered or uncovered and may be located within a driveway or yard setback in a location with an improved parking surface (i.e. paving, hardscape, decomposed granite, etc.)
  - 2. The location of replacement parking shall be consistent with all wetland habitat buffers, steep slope and geologic stability setbacks, and public scenic view protection regulations contained in the certified LCP.
  - 3. The replacement parking may be provided as tandem spaces or accessible by mechanical lift (if the mechanical lift is within a garage).
- O. The following parking requirements are specific to properties located along the shoreline or on the hillside within areas of high wildfire risk:
  - 1. To avoid significant impacts to public access within the Coastal Commission Appeals Jurisdiction (where public parking has been determined by the Coastal Commission to be scarce), the ADU shall provide one off-street parking space (covered or uncovered), except as follows:
    - a. The property on which the ADU is situated is located outside of the Coastal Commission Appeals Jurisdiction, as delineated in the Del Mar Community Plan and certified LCP.
    - b. The ADU would be located within the existing primary dwelling unit.



- c. The ADU would be located within an existing accessory building on the property.
  - d. The ADU would be located on a property within one-half mile walking distance of public transit, including a bus stop, train station, or paratransit service, if applicable. This exemption does not apply to those lots within the Coastal Commission Appeals Jurisdiction, as additional parking is still required on those lots to maintain coastal access.
  - e. The ADU would be located in a designated historic district or on a property listed in a Register of Historic Resources (local, state, or national).
  - f. The ADU would be located on a property within one block of a designated car share parking location.
- 2. To ensure public safety and emergency access, proposed ADUs located on a site with access from a street with an improved street width 20 feet or less shall provide one off-street parking space for the ADU. The off-street parking space may be located within a driveway or yard setback in a location with an improved parking surface (i.e., paving, hardscape, decomposed granite, etc.) or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions. Off-street parking shall not be located within a steep slope, wetland, geological setback, or other environmentally sensitive habitat area.
- P. ADUs are required to comply with the same building and safety requirements as the primary dwelling unit in accordance with the California Building Code and California Fire Code. Special construction standards that would not otherwise apply to the single dwelling unit as a whole shall not be required. Pursuant to the California Code of Regulations Section 13250 and Public Resources Code Section 30610(a), a proposed ADU or JrADU development shall not include improvements to expand or construct water wells, sewer, fire protection capacities, or septic systems, which is a class of development that requires a discretionary coastal development permit per the Coastal Act because it involves a risk of adverse environmental effects.
- Q. An automatic residential fire sprinkler system shall not be required for an ADU if the existing primary dwelling unit does not contain such a system.
- R. ADUs shall not be considered new residential uses for the purposes of calculating utility connection fees.



1. State law provides for a new or separate utility connection fee to be required for an ADU that is not contained within the existing primary dwelling unit or within an existing accessory building. The connection fee shall be proportionate to the burden of the ADU based on the ADU size and number of plumbing fixtures.
  2. Conversion of floor space to an ADU within an existing structure with the appropriate meter size shall not be subject to new water and sewer connection fees.
- S. For consistency with the Coastal Act, scenic views shall be protected as follows:
1. Projects shall be designed to ensure that no 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 bulk and scale of the proposed structure have been minimized to the greatest extent feasible commensurate with preserving the physical characteristics of the site.
  2. 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, as well as the appropriate setback(s) that protects public scenic views to the ocean.
  3. There are no private, primary scenic view protections from an ADU, and no protection of private views from a primary residence, as a result of ADU development.
- T. Any additional accessory mechanical equipment or exterior building features that are not otherwise required by Section 30.91.040, or for a dwelling unit per the California Building Code, shall be subject to Design Review in accordance with Chapter 23.08.
- U. ADUs shall not be located or approved where the ADU or JrADU is located on: a beach, a wetland, seaward of the mean high tideline, in an environmentally sensitive habitat area, within a coastal bluff setback, in a habitat buffer, environmentally sensitive habitat area or its buffer, or in an area designated as highly scenic area as determined by the City's certified Local Coastal Program.
- V. The owner of an ADU is requested to provide information to the City annually upon request for reporting to the State as to whether during the prior 12 months the ADU was rented to a tenant qualifying as low income, rented to a tenant qualifying as moderate income, occupied but not rented, or unoccupied.



- W. Pursuant to the California Code of Regulations Section 13250 and Public Resources Code Section 30610(a), ADU development shall not create significant alterations to landforms, which is a class of development that requires a discretionary coastal development permit per the Coastal Act because it involves a risk of adverse environmental effects. The following objective standards apply to proposed ADU development for protection of the public health and safety through the regulation of excavation and grading and protection of steep slopes and coastal resources consistent with the certified Local Coastal Program:
1. If the ADU is proposed within a proposed structure, the development pad for the new ADU structure shall be located at a grade elevation with a slope that is no greater than 4 to 1.
  2. Proposed ADU development shall not encroach within a “substantially steep slope” which is defined as a slope with a slope gradient of 25% or greater and an elevation differential of at least 20 feet between the top and bottom of the slope area.
  3. Proposed ADU and development shall be located at least 20 feet from the top edge of a substantially steep slope and at least 10 feet from the bottom of a substantially steep slope. The ADU development shall not be permitted to overhang the steep slope or the required steep slope setback.
  4. Proposed grading and excavation shall be minimized to the greatest extent feasible and limited to the area required for the ADU. Proposed grading shall be limited to a quantity of 200 cubic yards of cut and fill quantities combined. Any grading outside of the ADU structure footprint shall be subject to the requirements and procedures identified in Chapter 23.33 (Land Conservation Permit).
  5. The design and placement of the ADU shall preserve the natural topography and physical characteristics of the site. To protect coastal resources and reduce wildfire impacts consistent with requirements for other residential development, ADU development shall not be located at the crest, ridgeline, or top of a hill. ADUs shall not project above the peak of the ridgeline.
- X. If a proposed ADU is located on a parcel that falls entirely or partially within the special flood hazard areas identified on the 2019 FEMA Flood Insurance Rate Map (FIRM) or its updated versions, the following shall apply as a requirement for the administrative Coastal Development Permit:
1. Development shall be located and designed, including elevation and flood proofing, to minimize flood damage and avoid flood hazards.



2. Proposed development shall comply with the certified Local Coastal Program.
- Y. To aid in the prevention of loss of life, proposed ADU development on a lot that falls entirely or partially within a mapped Very High Fire Hazard Severity Zone shall demonstrate that:
1. The ADU site location has at least two emergency evacuation routes, and the Applicant shall be required to prepare an evacuation map specific to the parcel; or
  2. The Applicant shall provide evidence of an equivalent measure that demonstrates that the development will have no adverse impacts to public health and safety.

### **30.91.050 Junior Accessory Dwelling Unit Development Regulations**

- A. A Junior Accessory Dwelling Unit (JrADU) is a small dwelling unit that is no more than 500 square feet in size and contained entirely within, and accessory to, an existing, or proposed, habitable primary Single Dwelling Unit pursuant to the regulations in Section 30.91.050 and California Government Code section 65852.22. The JrADU may be created within the walls of an attached garage as attached garages are considered to be within the walls of the primary dwelling unit consistent with State law.
- B. A JrADU that is designed to meet all of the requirements in Section 30.91.050 shall be issued a permit in accordance with Section 30.91.030. The City is preempted by State Law from requiring any type of discretionary review, or public hearing, except for an Administrative Coastal Development Permit where required in accordance with Section 30.91.030(C)(5).
- C. A maximum of one JrADU is permitted per lot developed with a single dwelling unit and located in a single dwelling unit residential zone that allows JrADUs as identified in Section 30.91.020.
1. A JrADU shall not be permitted in a multiple dwelling unit, mixed use, or non-residential zone or on a lot with multiple dwelling unit development.
  2. A JrADU shall be permitted only within the walls of a primary single dwelling unit, which can include an attached garage.
  3. A lot with a JrADU may also contain a detached ADU on the lot in accordance with Section 30.91.040(B).
  4. A JrADU shall not be permitted within a detached structure.



5. The maximum floor area ratio of a lot shall not prohibit development of a JrADU within the walls of the primary dwelling unit. Relocation of any converted square footage from the footprint of the JrADU to another location on the lot shall be subject to the maximum floor area ratio, lot coverage, and permit process of the base zone(s).
- D. A JrADU shall be constructed entirely within the walls of an existing or proposed primary single dwelling unit and shall include the following:
1. A separate exterior entry to the primary dwelling unit that is separate from the main entrance;
  2. A cooking facility with appliances, and a food preparation counter and storage cabinets that are reasonable to the size of the unit; and
  3. Access to a bathroom within the JrADU or the primary dwelling unit.
  4. Although JrADUs are required to be within the walls of the primary dwelling unit, they are not required to have an interior connection to the primary dwelling unit.
- E. Post January 2025, the property owner shall reside on the property in either the primary dwelling unit or in the JrADU, unless the property is owned by a governmental agency, land trust or non-profit housing organization. The requirement for the property owner to reside in either the primary dwelling unit or in the JrADU shall also apply to properties developed with an ADU and JrADU.
- F. The JrADU may be rented, but shall not be sold or conveyed separately from the primary dwelling unit, nor shall authorization be granted for a condominium conversion of a JrADU. If rented, the term for rental shall be for a term longer than 30 consecutive days.
- G. In order to ensure the continuation of public access to coastal resources, where an existing garage, carport, or covered parking, is demolished or converted to a JrADU, replacement off-street parking shall be required and all required off-street parking for the primary dwelling unit shall be maintained or replaced on-site.
- H. A JrADU shall not be considered a separate or new dwelling unit for the purpose of any fire or life safety regulation. Fire or life safety requirements that apply to a single dwelling unit may be applied to the structure as a whole inclusive of the JrADU. Special construction standards that would not otherwise apply to the single dwelling unit as a whole shall not be required for the JrADU.



- I. An automatic residential fire sprinkler system shall not be required for a JrADU if the existing primary dwelling unit does not contain such a system.
- J. A primary dwelling unit with the appropriate meter size shall not be subject to new water and sewer connection fees for conversion of existing floor space to a JrADU.
- K. There are no private, primary scenic view protections from a JrADU.
- L. The owner of a JrADU is requested to provide information to the City annually upon request for reporting to the State as to whether during the prior 12 months the JrADU was rented to a tenant qualifying as low income, rented to a tenant qualifying as moderate income, occupied but not rented, or unoccupied.
- M. If a proposed JrADU is subject to approval of an Administrative Coastal Development, and is located on a parcel that falls entirely or partially within the special flood hazard areas identified on the 2019 FEMA Flood Insurance Rate Map (FIRM) or its updated versions, the permit approval shall be subject to the requirements in Section 30.91.040.X.

### **30.91.060 Regulations for ADUs on Lots with Multiple Dwelling Units**

- A. In a zone that allows two primary dwelling units per lot, a lot with two existing dwelling units is allowed up to two ADUs in accordance with the regulations in Section 30.91.040 and the following:
  - 1. One ADU within the walls of the existing primary dwelling unit; or
  - 2. One ADU attached horizontally sharing a common wall with the existing primary dwelling unit at the first story level at a maximum height not to exceed 16 feet above grade; or
  - 3. One detached ADU per primary dwelling unit at a maximum height not to exceed 16 feet above grade.
  - 4. The two ADUs shall not be attached to each other.
- B. On a lot where multiple dwelling units are located within an existing structure that contains three or more dwelling units or within multiple structures that contain three or more dwelling units, the property owner shall be permitted to convert existing spaces within each multiple dwelling unit structure to ADUs as follows:



1. The maximum number of ADUs permitted in accordance with Section 30.91.060(B) shall not exceed 25 percent of the total number of existing dwelling units on the lot.
  2. The existing space to be converted to an ADU shall not be located within, or solely owned or controlled by, an individual dwelling unit on the multiple dwelling unit lot.
  3. Conversion of the space shall comply with the California Building Code Standards for a dwelling unit; unless inconsistent with State law.
  4. Conversion of the space would not be in conflict with the existing permits applicable to the property by removing required access, open space, or recreation amenities.
- C. Up to two detached ADUs are permitted on a lot with existing multiple dwelling units in addition to the ADUs allowed within the existing multiple dwelling unit structure per Section 30.91.060(B) subject to the following:
1. The City shall accommodate proposed ADUs meeting the universal size provision of at least 800 square feet in size, unless the California Coastal Act supersedes this minimum size requirement due to impacts to protected coastal resources or otherwise impedes public access to the coast. In such a case, the City will prepare written findings and, where applicable, mitigation measures to alleviate such impacts as necessary to accommodate ADUs at least 150 square feet in size that meet the definition of an efficiency unit as defined per California Government Code Section 65852.2(c)(2)(A).
  2. The maximum height of a detached ADU shall be 16 feet above grade.
  3. A detached ADU shall comply with the required street fronting setbacks of the applicable zone, but otherwise may be located within 4 feet of the side or rear property lines, except that in all cases, including conversion of non-habitable, legal, non-conforming structures noted in Section 30.91.040(M)(1), the ADU shall comply with the following additional setback requirements.
    - a. The required coastal bluff setback in the Coastal Bluff Overlay Zone.
    - b. The required Beach Preservation Initiative setback in the Beach Overlay Zone.



- c. The required setback in the Bluff, Slope, and Canyon Overlay Zone.
  - d. Any setbacks required to protect wetlands, wetland habitat, coastal access, steep slopes, and environmentally sensitive habitat area buffers.
  - e. Per the City's LCP, the interior side and rear yard setbacks required by the applicable zone, if necessary to protect public scenic views to the ocean.
- D. All ADUs developed in accordance with Section 30.91.060 shall also comply with the standards in Section 30.91.040, unless explicitly stated otherwise. Where designed accordingly, proposed ADUs on lots with multiple dwelling units shall be issued a permit in accordance with Section 30.91.030.

### **30.91.070 Incentive Program**

- A. In order to encourage the use of ADUs to provide housing for lower income households, as defined by the California Department of Housing and Community Development, the City has an incentive program available. Incentives shall be granted to property owners who commit to record a deed restriction, covenant, and/or similar instrument that limits the use and occupancy of the ADU based on restricted income limits and applicable rental rates for a low-income household as established annually by the State of California.
- B. The incentives may include fee waivers or refunds and other incentives adopted by Ordinance in addition to the following planning and zoning incentives:
  - 1. On lots with single dwelling unit or duplex development (attached or unattached), one bonus unit of a maximum 500 square feet in size JrADU shall be awarded as a means to help the property owner offset the investment needed to create the rent restricted ADU. The bonus unit must comply with the provisions set forth in Section 30.91.050. Notwithstanding Section 30.91.050(A), a bonus unit may be developed as a JrADU in multiple dwelling unit zones for the purposes of the Incentive Program. In addition, a 500 square foot FAR bonus shall be awarded.
  - 2. On lots with multiple dwelling unit development containing three or more primary dwelling units in the RM zone, R2 zone, and commercial zones, shall be awarded bonus units (ADUs and/or JrADUs) at a percentage that is proportional to help offset the cost associated with creation of rent restricted units.



- a. Owners shall identify and designate by deed restriction, covenant, and/or similar instrument each new deed restricted low-income unit to be created on-site, which may include a combination of any existing dwelling units and/or any new units developed per the Incentive Program.
  - b. Development of the bonus units must comply with the objective standards in Sections 30.91.060 and 30.91.050 except as follows:
    - (i) New bonus units shall be located either within the walls of existing structures on-site within converted or re-purposed space and/or consolidated and co-located within a maximum of one new structure developed in compliance with protections of the certified LCP for public scenic views, environmentally sensitive habitat areas, steep slopes, and minimum setbacks, maximum height, and parking standards of the applicable base zone and overlay zones. Bonus unit development shall be exempt from the Floor Area Ratio (FAR) and lot coverage limits of the zone.
    - (ii) Notwithstanding Section 30.91.050(A), bonus units may be developed as a JrADU in multi dwelling unit zones for the purposes of the Incentive Program.
    - (iii) Properties with existing non-conforming density shall be eligible for the Incentive Program if the property has an on-site property manager.
    - (iv) A maximum of 15 bonus units shall be awarded per project.
3. All applications for participation in the City's Incentive Program shall be subject to approval of an Administrative Coastal Development Permit processed in accordance with Section 30.91.030.

### **30.91.080    Amnesty Program**

To encourage owners with existing, unpermitted ADUs as of April 15, 2021, to obtain permits and formally legalize their units, the City has established a program whereby all applications for participation in the City's ADU Amnesty Program shall be subject to approval of an Administrative Coastal Development Permit processed in accordance with Section 30.91.030.

### **30.91.090    Severability**



Should a court of competent jurisdiction determine that these regulations are void or if certain terms or provisions are voided, then those regulations shall either become void in their entirety, or where the courts have determined that certain terms or provisions are void by operation of the law, then those terms and provisions shall have no force or effect.

**SECTION SEVEN:**

Pursuant to the California Environmental Quality Act (CEQA), the proposed action has been analyzed and determined to be Exempt from CEQA as follows:

- Statutory exemption per Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h) applicable to the adoption of an ADU ordinance to implement the Government Code Section 65852.2 provisions; and
- Statutory exemption per CEQA Guidelines Section 15265 because the proposed action constitutes an amendment to the City's certified Local Coastal Program (LCP) and this section shifts the burden of CEQA compliance from the local agency to the California Coastal Commission (CCC) as set forth in Section 21080.9 of the Public Resources Code for the activities necessary for the preparation and adoption of an LCP amendment in compliance with the Coastal Act. The proposed actions include corollary amendments to the City's Zoning Code, which is part of the certified City of Del Mar LCP as certified under Section 21080.5 of the Public Resources Code; and
- Categorical exemption per CEQA Guidelines Class 1 exemption per Section 15301 (Existing Facilities) because the proposed amendments would allow a negligible expansion of existing residential use in urban, infill locations to accommodate ADUs and accessory bonus units through the proposed incentive program for creation of affordable housing for low income households consistent with the City's certified Housing Element; Class 2 exemption per Section 15302 (Replacement or Construction) because the proposed amendments would allow new small accessory units and structures only on sites with existing residential development and would maintain substantially the same purpose and capacity; Class 3 (New Construction or Conversion of Small Structures) because the amendments would allow for a limited number of new structures in compliance with the California Government Code mandatory provisions for ADUs, the City's certified LCP, and other applicable State Housing Law and Coastal Act requirements; and Class 32 (Infill Development Projects) because the proposed development would allow small-scale infill development consistent with the certified Housing Element, would not result in any significant effects to traffic, noise, air quality or water quality, would not be allowed within any locations containing environmentally sensitive habitat for endangered, rare, or threatened species, and would be limited to sites that can adequately be served by public services and utilities.

Notwithstanding applicability of the Statutory Exemptions and Categorical Exemptions identified above, the proposed actions have been the subject of prior environmental



analysis in the 6th Cycle Housing Element Update Final Program Environmental Impact Report (SCH No. 2020029064) certified by the City Council on October 5, 2020 (Resolution 2020-52), which analyzed and disclosed anticipated impacts of future housing development. Refer to the Final 6<sup>th</sup> Cycle PEIR:

[www.delmar.ca.us/DocumentCenter/View/7171/Final-PEIR-91020](http://www.delmar.ca.us/DocumentCenter/View/7171/Final-PEIR-91020)

No new or substantially greater impacts would result. As such, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the Final PEIR referenced above, the proposed action does not require a subsequent EIR or further environmental review.

**SECTION EIGHT:**

This Ordinance was introduced by the City Council on December 4, 2023.

**SECTION NINE:**

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 TEN:**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

**SECTION ELEVEN:**

Within 30 days of City Council adoption, the Ordinance will be submitted to the California Department of Housing and Community Development for review in accordance with State Housing law.

**SECTION TWELVE:**

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, California, at the Regular Meeting held this 18<sup>th</sup> day of December, 2023.

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Tracy Martinez, Mayor  
City of Del Mar







APPROVED AS TO FORM:

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Leslie E. Devaney, City Attorney  
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO  
CITY OF DEL MAR

I, SARAH KRIETOR, Administrative Services Manager/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. 1002, 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 18<sup>th</sup> day of December, 2023, by the following vote:

AYES:	Mayor Martinez, Deputy Mayor Quirk, Councilmembers Druker, Gaasterland, and Worden
NOES:	None
ABSENT:	None
ABSTAIN:	None

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Sarah Krietor, Administrative Services  
Manager/City Clerk  
City of Del Mar