

## ORDINANCE NO. 936

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, ADOPTING A PILOT PROGRAM FOR CREATION OF DEED RESTRICTED AFFORDABLE ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS.

WHEREAS, Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JrADUs) are small dwelling units that provide for independent living on the same site as a larger primary dwelling unit; and

WHEREAS, the State of California passed Senate Bill 1069 and Assembly Bill 2299 relating to Accessory Dwelling Units (ADUs) which amended California Government Code sections 65582.1, 65583.1, 65589.4, 65852.150, 65852.2, 66412.2 and became effective January 1, 2017; and

WHEREAS, the California State legislature declared in Government Code section 65852.150 that 1) ADUs are a valuable form of housing, 2) ADUs provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others at below market prices within existing neighborhoods, 3) homeowners who create ADUs benefit from added income and an increased sense of security, 4) allowing ADUs in single-family or multifamily residential zones provides additional rental housing stock, 5) California faces a severe housing crisis, 6) the State is falling far short of meeting current and future housing demand with serious consequences for the State's economy, our ability to build green infill consistent with State greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners, 7) ADUs offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods while respecting architectural character, and 8) ADUs are therefore an essential component of California's housing supply; and

WHEREAS, the State of California passed Assembly Bill 2406 to add section 65852.22 to the California Government Code relating to JrADUs, which took effect immediately on September 28, 2016, thereby authorizing a local agency to adopt an Ordinance to provide a process for approval of JrADUs that provide for independent living entirely within an existing primary dwelling unit; and

WHEREAS, the State of California requires each City to adopt a Housing Element as a part of its General Plan; and

WHEREAS, the City of Del Mar has an adopted Housing Element; and

WHEREAS, the development of ADUs and JrADUs is one of several options the City of Del Mar can use to achieve its housing goal to create 22 affordable dwelling units in five years consistent with the City's adopted Housing Element; and

WHEREAS, the City of Del Mar adopted a Zone Code Amendment (ZA16-010) and Local Coastal Program Amendment (LCPA16-004) as part of a separate Ordinance to amend Chapter 30.4 and Chapters 30.10 through 30.21 and add a new Chapter 30.91 to the Del Mar Municipal Code to establish local regulations for Accessory Dwelling Units and Junior Accessory Dwelling Units by designating the allowable zones where ADUs and JrADUs are allowed and the specific criteria that must be complied with for ministerial approval; and

WHEREAS, any ADU or JrADU that meets the adopted local criteria for ADU or JrADU approval would be eligible for the City's pilot program; and

WHEREAS, it is the intent of the pilot program to encourage the creation of deed restricted affordable ADUs or JrADUs that the City can use to count towards the City's regional housing obligation of 15 low income units, 3 very low income units, and 4 extremely low income units; and

WHEREAS, the exact income limits for the low income, very low income, and extremely low income units identified through the Regional Housing Needs Allocation (RHNA) process is based on a combination of federal and state law whereby the United States Department of Housing and Urban Development (HUD) annually sets median family income (MFI) numbers to reflect its Section 8 income limits and changes thereto, and California's Department of Housing and Community Development then relies on the HUD MFI numbers to annually determine California's area median income (AMI) limits; and

WHEREAS, a lower income household is defined by State law as people or families whose gross income does not exceed 80 percent of AMI and includes low income, very low income, and extremely low income households; and

WHEREAS, an "Eligible Household" shall mean a household that has been determined to be eligible to be a tenant of the ADU as a lower income household; and

WHEREAS, "Affordable Rent" shall mean the maximum allowable rent for the Accessory Dwelling Unit, equal to one-twelfth (1/12th) of thirty percent (30%) of seventy percent (70%) of the Median Household Income, adjusted for assumed household size of two persons in a one-bedroom or three persons in a two-bedroom; and

WHEREAS, a commitment by the property owner to create a deed restricted affordable ADU or JrADU for rent for 30 years at an "affordable rent" in accordance with the pilot program would make the property eligible for a floor area bonus of up to 500 square feet maximum via this Ordinance; and

WHEREAS, various incentives for creation of affordable units have been contemplated over the years, particularly through the work of the Housing Element

Advisory Committee, and a modest floor area bonus seems to be the incentive most likely to encourage program participation; and

WHEREAS, the 2017 numbers used to define a low income household (80% of the San Diego County area median income) are \$50,950 for 1 person, \$58,200 for a 2-person household, \$65,500 for a 3-person household, and \$72,750 for a 4-person household; and

WHEREAS, as set forth in Section 21080.17 of the Public Resources Code, adoption of an Ordinance to implement the provisions of Government Code Sections 65852.1 and 65852.2 is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15282(h), and adoption of a pilot program with a floor area bonus of 500 square feet maximum is exempt pursuant to CEQA Guidelines Section 15301(e) (Existing Facilities), which covers additions to existing structures; and

WHEREAS, on August 2, 2017, the Del Mar Housing Corporation held a public meeting and voted 5-0-2 to recommend approval of a pilot program to test floor area as an incentive in exchange for the creation of deed restricted affordable ADUs or JrADUs to meet a portion of the City's regional obligation for affordable housing; and

WHEREAS, a noticed public hearing of the Planning Commission was conducted on August 8, 2017, to provide an opportunity for the public to comment on the proposed pilot program and for the Planning Commission to make a recommendation to the City Council; and

WHEREAS, the Planning Commission voted unanimously to recommend approval to the City Council of the proposed pilot program; and

WHEREAS, the proposed pilot program will be effective for two years from the program effective date or approval of two ADUs or JrADUs, whichever occurs first as a way to test the approach and make progress towards the City's obligation of 22 lower income affordable units; and

WHEREAS, the pilot program may be extended by action of the City Council.

NOW THEREFORE, the City Council of the City of Del Mar hereby ordains as follows:

## **SECTION ONE**

An applicant for the pilot program shall submit the City's universal development application and the Accessory Dwelling Unit application forms.

## **SECTION TWO**

The applicant shall demonstrate that the unit meets the adopted local criteria applicable to a standard ADU or JrADU. This includes a requirement that the owner live on the premises in either the primary dwelling unit or in the ADU or JrADU as applicable.

## **SECTION THREE**

The property owner shall record a deed restriction to memorialize the owner's commitment to 1) rent the ADU or JrADU at an "affordable rent" for a minimum of 30 years to any "eligible household", and 2) to ensure the ADU or JrADU is continuously available for rental as a low income affordable unit, that the ADU or JrADU is not rented at market rate during the 30 year deed restriction, and that the ADU or JrADU shall not be used for any other purpose than rental as a low income affordable unit.

## **SECTION FOUR**

State law requires that the City provide an annual report to California's Department of Housing and Community Development by April 1 of each year to report on the status of the City's progress in meeting its regional housing obligation and in the implementation of adopted Housing Element goals. The property owner shall agree to provide annual reports by February 1 that identify the status of the deed restricted ADU or JrADU. The annual reports shall identify the total time rented during the prior calendar year, the rent collected, and shall include a statement of qualifying tenant income to demonstrate compliance with the maximum 80% area median income requirement.

## **SECTION FIVE**

Lots that are developed to the maximum floor area of the applicable zone or that are legal non-conforming are eligible to participate in the pilot program.

## **SECTION SIX**

Property owners who meet the requirements of the pilot program and program commitment shall be granted a floor area bonus up to 500 square feet. The 500 square feet shall be subject to design review and a Design Review Board permit, unless the floor area bonus is used to build the actual ADU, in which case the City is precluded by State law from requiring any type of discretionary permit review for construction of an ADU.

## **SECTION SEVEN**

The City shall have the authority to invoke the remedies and enforcement penalties for violation of this ordinance as set forth in Chapter 1.08, or any successor section thereof, of the Del Mar Municipal Code. Breach of any agreement entered into arising from this

ordinance shall be considered a violation of this ordinance. Notwithstanding the foregoing, the City shall also have the right to sue a property owner, for breaching the contract required by this ordinance, in the applicable state or federal court, not only for damages, but for specific performance of the contract. Nothing set forth in this Section shall serve to limit any other remedies available to the City at law or in equity and the City shall have the right to pursue all available remedies.

## **SECTION EIGHT**

The City Council finds that approval of this ordinance is categorically exempt from the preparation of an environmental document pursuant to the California Environmental Quality Act under CEQA Guidelines Article 19, Section 15301. This ordinance in and of itself will not have a significant impact on the environment because it involves existing facilities with a negligible or no expansion of use. The City Council bases this finding upon the record prepared by the City and the City's analysis of the potential environmental effects of this ordinance.

## **SECTION NINE**

This Ordinance was introduced by the City Council on September 18, 2017.

## **SECTION TEN**

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 ELEVEN**

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 TWELVE**

Upon adoption, the Ordinance will take effect and be in force 30 days from the date of City Council adoption.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the 21st day of May 2018.

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Dwight Worden, 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, ASHLEY JONES, Administrative Services Director/City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No.936, 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 21st day of May, 2018, by the following vote:

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

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