



# City of Del Mar Staff Report



TO: Honorable Mayor and City Council Members

FROM: Leslie Devaney, City Attorney  
Via Scott W. Huth, City Manager  
Prepared by Barry J. Schultz, Assistant City Attorney and Tracy Elliot Yawn, Planning Manager

DATE: July 5, 2016

SUBJECT: Report of the Ballot Initiative Entitled "Voter Approval for Certain Development Projects"

## REQUESTED ACTION/RECOMMENDATION:

Accept the report, in Attachment A, analyzing the subject Initiative (Initiative) pursuant to California Elections Code Section 9212.

## DISCUSSION/ANALYSIS:

On May 18, 2016, the proponents of the subject Initiative petition filed the signed petitions in accordance with California Election Code. Subsequently, the Initiative petition was provided to the Registrar of Voters for signature verification, which was attained on June 24, 2016. On June 6, 2016, the City Council approved Resolution 2016-37 directing staff to prepare an informational report analyzing impacts of the Initiative, pursuant to California Elections Code Section 9212. In addition, the City Council directed staff to address specific concerns, including:

1. How this initiative would impact the State Certified Housing Element and what the consequences would be if the City were to fail to follow State Law;
2. How this initiative would overlap with Measure B and how both would be implemented; and
3. What the ramifications and consequences would be for the entire community?

Attached is the requested report, which addresses such questions regarding the Initiative. The report discusses the background and purpose of an Elections Code 9212 Report; provides a summary of the Initiative; identifies its conflicts with State Law, such as with the State Housing Element, Density Bonus Law, Subdivision Map Act and Variances; discusses the Initiative's conflicts with the City Council's Administrative Authority and Single Subject Rule, as well as the Initiative's inconsistency with Planning and Zoning documents, including the Community Plan, Housing Element, Zoning Code,

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City Council Action:

Measure B, and Local Coastal Program; and reviews the potential fiscal impacts of the Initiative.

FISCAL IMPACT:

The preparation of the 9212 Initiative Report has diverted funding from other City Council priorities identified in the adopted FY 2015 - 2016 and 2016 – 2017 Operating and Capital Budget. The long term fiscal impact associated with the passage of the Initiative is identified in the report found in Attachment A.

ENVIRONMENTAL IMPACT:

The preparation of the 9212 Initiative Report does not constitute a project pursuant to CEQA Guidelines 15378(b)(3). A voter Initiative is exempt from requirements of the California Environmental Quality Act.

ATTACHMENTS:

Attachment A – “Voter Approval for Certain Development Projects” Initiative 9212 Report

# ELECTIONS CODE SECTION 9212 REPORT ON VOTER APPROVAL OF CERTAIN DEVELOPMENT PROJECTS INITIATIVE

Presented July 5, 2016  
Del Mar City Council Meeting



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## **1. INTRODUCTION**

California Elections Code Section 9212 provides that the City Council may order a report on the effect of a proposed initiative and may refer the initiative measure to any city agency or agencies for such report. In ordering the report, the Council may request that the city agency or agencies address the following: fiscal impact, effect on the City's general and specific plans, including the housing element and the consistency between planning and zoning; effect on land use, including the impact on availability and location of housing; infrastructure impact; impact on use of vacant parcels; and any other matters the Council requests to be in the report. The report must be presented to the legislative body within 30 days after the elections officer certifies to the legislative body the sufficiency of the petition (Elections Code, Section 9212 (b).) After reviewing and considering this report, the City Council must either adopt the initiative without any amendments or schedule an election for consideration of the initiative by city voters (special election) within 10 days. The City Council may also develop their own initiative that may run concurrently with this item.

## **2. Background:**

On June 6, 2016, the City Clerk advised the Council that the Voter Approval of Certain Development Projects Initiative (VADP) had been submitted and once the County Registrar had made a determination on the adequacy of the signatures, a Certificate of Sufficiency certifying the signatures would be issued for the Initiative to move forward for consideration by the Council. In response, the Del Mar City Council approved Resolution No. 2016-37 and authorized staff to prepare an informational report regarding the effects of the Initiative pursuant to California Elections Code section 9212. Specifically, the City Council directed staff to address both the list of potential impacts listed in the California Elections Code Section 9212 and the questions raised including: 1) How would this initiative impact the State Certified Housing Element and what would the consequences if the City were to fail to follow State Law; and (2) How does this initiative overlap with Measure B and how would both be implemented; and (3) What are the ramifications and consequences for the entire community? This report responds to that direction.

## **3. Initiative Summary**

The ordinance proposed by initiative petition would require voter approval of certain development projects of 25,000 or more square feet in any commercial zone by amending the Community Plan, Housing Element, and Municipal Code. The square footage threshold would be met either if the individual parcel is 25,000 square feet or more or if adjacent parcels developed together meet or exceed 25,000 square feet.

Proposed revisions to the Del Mar Community Plan would limit and require voter approval to allow certain development-related actions to occur for developments of 25,000 square feet or more in any commercial zone, including: increases in permitted height structure; increases in floor area ratio and lot coverage allowed; increases in the residential density permitted, whether by general plan amendment, community plan amendment, local coastal program amendment, specific plan, planned development, zone change, tentative subdivision map, or other discretionary land use approval; and approval of a specific plan for qualifying parcels with any commercial designation or in any commercial zone as of March 15, 2016. The Community Plan would further be amended to delete goals to explore mixed residential commercial land uses within the commercial area adjacent to Stratford Court and to allow mixed residential commercial land uses within other areas of the commercially zoned downtown area.

The Housing Element would be revised to require voter approval for: a zone code amendment and associated actions to assign a new land use designation for two North Commercial Zone vacant properties, as well as any other changes to those properties that would require or allow a change to the zoning code, specific plan, density bonus, or increase in floor area ratio, lot coverage, or building height; zone code amendments to the North Commercial and Professional Commercial Zone's development standards to increase allowable residential density; any change to the land use and zoning policies of qualifying parcels in the North Commercial and Professional Commercial Zones from the underlying zone permitted as of March 15, 2016; any specific plan, zone code changes or density bonus for development projects of 25,000 square feet or more for parcels with any commercial designation in the Community Plan or zoning code as of March 15, 2016; and any increase in floor area ratio, lot coverage, or building height limits or re-designation for higher density residential development for development projects of 25,000 square feet or more for parcels in any commercial zone.

Proposed revisions to the Municipal Code would require voter approval for any increase in floor area ratio, lot coverage, and/or building height limits with respect to developments of 25,000 square feet or more in the Residential-Commercial, Central Commercial, Beach Commercial, North Commercial, Professional Commercial, or Visitor Commercial Zones as of March 15, 2016, as well as voter approval for any variance, zoning amendment, or density bonus for such qualifying development projects in commercial zones.

## **LEGAL ANALYSIS**

### **4. VADP Conflicts With State Law**

The California Constitution prohibits cities from exercising their police power to enact ordinances that conflict with provision of general state law. California Constitution – Article XI, § 7. This limitation applies to measures adopted either by the city council or by the voters directly. *Legislature v. Deukmijian*, 34 Cal. 3d 658, 675 (1983); *Galvin v.*

*Bd. of Supervisors of Contra Costa County, 196 Cal. 686, 692 (1925).* The VADP initiative appears to conflict with the State Housing Element Law, Density Bonus Law, Subdivision Map Act, and State variance law.

#### **4.1 State Housing Element**

State Housing Element Law requires that the City's Housing Element demonstrate site development capacity equivalent to, or exceeding, the projected housing needs for the City and the City is required to prepare a land inventory demonstrating that capacity. California Government Code Section 35583(a)(3) Where the inventory does not demonstrate adequate site capacity, the housing element must contain certain actions that will be taken to address the shortfall.(Government Code § 35583(c)(1)).

Due to the City's small size, the fact that it is largely built-out, and due to cost of land, the City has faced challenges in meeting its share of affordable housing. The City's share of affordable housing is established through the State mandated regional housing needs allocation (RHNA) process (Government Code §35585 et seq.). The City's recently adopted 2013-2021 Housing Element identifies a RHNA short fall of 22 lower income units (13 very low and 9 low income units), which includes a roll over RHNA penalty of ten lower income units from the previous Housing Element cycle<sup>1</sup>. In order to address the shortfall, the Housing Element includes various implementation strategies. The most significant strategies include the following:

- 2E Zoning Code amendment to increase allowed density on properties in the North Commercial (NC) zone from one unit per site to 20 du/ac for projects that include an affordable component.
- 2F Zoning Code amendment to increase allowed density on properties in the Professional Commercial zone from one unit per site to 20 du/ac for projects that include an affordable housing component.
- 2G Zoning Code / Community Plan amendments and Local Coastal Program Amendment to assign a new land use designation and accompanying development parameters to two adjacent parcels in the Neighborhood Commercial zone allowing residential development at 20 du/ac with an affordable housing component.

The VADP initiative amends the Housing Element to specifically require that each of the strategies intended to bring the City's Housing Element into compliance with State Housing Law is subjected to a public vote. This is contrary to the State Housing Law and represents a significant barrier to compliance with the City's affordable housing obligations. As set forth in the City's housing consultant report, failure by the City to meet its housing obligations may result in De-Certification of the 2013-2021 Housing Element, a roll-over penalty and ineligibility for certain Federal and/or State grants.

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<sup>1</sup> May 16, 2016 Veronica Tam Memo

Additionally, the City could be exposed to a legal action to compel the City to bring its Housing Element into compliance. If the City fails to adopt the rezoning required, a court is required to issue an order or judgment, after considering the equities presented by all parties, compelling the City to do so within sixty days or the earliest time consistent with public noticing requirements. Government Code § 35587(d)(1). This would result in a court order compelling the City to implement the rezonings per the certified Housing Element as identified above.

a) Housing Accountability Act (Government Code 65589.5)

As set forth in the City's Housing Consultant Report, should the City fail to complete the rezonings required to meet its housing obligations within the mandated time frame, the City may be precluded from 1) disapproving a housing development project<sup>2</sup>, 2) requiring a discretionary approval or 3) imposing a condition that would render the project infeasible if the project is proposed on a site required to be rezoned and it complies with the applicable , objective general plan and zoning criteria.

The VADP initiative specifically subjects each of the re-zonings required for the City to meet its affordable housing obligations to a public vote. This voter requirement will substantially impede the City in its effort to bring its Housing Element into compliance. In the event, the proposed rezoning are rejected the City may lose its land use authority pursuant to the Housing Accountability Act.

b) Least Cost Zoning (Government Code 65913.1)

Cities must designate and zone sufficient vacant land with "appropriate standards"<sup>3</sup> for residential use to meet the housing needs of all income levels. Government Code section 65913.1 The initiative requires a public vote for zone changes, community plan amendments or other discretionary approvals which increase density, height, floor area ratio or lot coverage. The initiative creates a substantial barrier to the City compliance with the "least cost zoning" requirements of Government Code section 65913.1. This restriction may subject the City to litigation. In the event a court finds that an action of the city violates the "least cost zoning requirements the court may order the city to bring its action into compliance within 60 days. Government Code section 65913.7

**4.2 Density Bonus Law (Government Code § 65915 et seq.)**

Density Bonus Law requires a city to grant a density bonus and a certain number of concessions or incentives to a developer who agrees to construct certain housing developments that provide either affordable or senior housing and meets certain criteria (Government Code § 65915 (a)(b)(1)). The concessions or incentives could include a

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<sup>2</sup> A housing development project means a project to construct a residential project for which the developer provides sufficient legal commitments to the City to ensure the continued availability and use of 49% of the units for very low, low and moderate income households. Government Code section 65583(4)

<sup>3</sup> Appropriate standards means densities and requirements imposed on residential lots that contribute to the economic feasibility of producing housing at the lowest possible cost including requirements with respect to minimum floor areas , building setbacks, side yards and lot coverage.

reduction in site development standards, modification of zoning code requirements, or other regulatory incentives or concessions proposed by the developer. The granting of these incentives / concessions is mandatory.

The VADP initiative amends the Del Mar Community Plan, the City's Housing Element and Municipal Code to require a public vote for any density bonus on any parcel of land, or adjacent parcels of land taken together, totaling 25,000 square feet or more. This public vote requirement is contrary to State Density Bonus Law. Additionally, the initiative would create a significant impediment to the construction of affordable housing in direct contravention of the State's policy to encourage the construction of affordable housing.

The initiative would also require a public vote of the granting of an incentive / concession in the form of relief with respect to floor area ratio, height, and lot coverage standards. Denial of such concessions pursuant to Density Bonus Law would conflict with State law. *Building Industry Association of San Diego v. City of Oceanside*, 27 Cal. App. 4th 744, (1994).

#### **4.3 Subdivision Map Act**

Approval or denial of a tentative subdivision map is governed by the State Subdivision Map Act (Government Code § 66411, et seq.) and a City cannot impose regulation contrary to the Subdivision Map Act's provision. *Shelter Creek Development Corporation v. City of Oxnard*, 34 Cal. 3d 733, 735-36 (1983) Prior to approving a tentative map the City is required to make certain findings regarding the consistency of the proposed map with the general plan and any applicable specific plan. Government Code § 66474.

The VADP initiative requires that tentative maps involving specified properties within commercial zones are subject to approval by the voters of the City of Del Mar at a special or general election. The initiative provides no guidelines or criteria for approval or rejection. The voters' action without such guidelines or criteria results in an arbitrary process which conflicts with the approval / denial standards set forth in the Map Act<sup>4</sup>.

#### **4.4 Variances**

Variances are permits which allow deviations from local zoning regulations due to unique hardships related to a particular parcel because the parcel is different from the others to which the regulation applies due to its size, shape, topography, locations or surrounding (Government Code § 65906). Approval of a variance may only be granted if all the applicable legislative requirements of Government Code § 65906 are met. This criteria supersedes any inconsistent requirement of local ordinances. *Topanga Association for Science Community v. County of Los Angeles*, 11 Cal. 3d 506, 518 (1974).

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<sup>4</sup> This voter requirement also illegally interferes with Council's administrative authority which is addressed later in this report

The initiative amends DMMC 30.78.030 to require a public vote on any variance that will allow any increase in permitted floor area ratio, lot coverage and/or building height limit for any property totaling 25,000 square feet or more located in a commercial zone. No guidelines or criteria are provided the approval or denial of a variance. The voter's action without such guidelines or criteria results in an arbitrary process which is inconsistent with and conflicts with the State law governing variances.

#### **5. VADP Intrudes Upon the City Council's Administrative Authority**

The initiative and referendum power extend only to legislative acts. Actions which are administrative in nature can neither be enacted nor overturned by initiative or referendum. *Yost v. Thomas*, 36 Cal. 3d 561,570 (1984). An act is legislative if it prescribes a new policy or plan whereas it is administrative in its nature if it merely pursues a plan already adopted. *Lincoln Prop. Co. No. 41 Inc. v. Law*, 45 Cal App. 3d 230, 234 (1974). The approval of variances, conditional use permits, and tentative subdivision maps, involve the application of pre-established standards and conditions to particular land uses and are, therefore, considered administrative. *W.W. Dean & Associates v. City of San Francisco*, 190 Cal App. 3d 1368 (1987).

The initiative impermissibly intrudes upon the City Council's administrative authority. It amends the General Plan to require a public vote for any planned development, tentative subdivision map or other discretionary land use decision. The VADP initiative also seeks to amend DMMC Chapter 30.78 relating to variances and requires that variances be subject to a public vote. As discussed above, variances are administrative in nature and are not subject to the initiative process.

Finally, the VADP initiative seeks to amend the City's Housing Element and the City's Municipal Code to require a public vote for the allowance of a density bonus. As discussed above, density bonuses are governed by State law and involve the application of pre-established standards and conditions and are, therefore, administrative in nature and not subject to the initiative process.

#### **6. VADP Initiative Potentially Violates the Single Subject Rule**

Initiatives and referenda are limited by the single subject rule, which limits an initiative or referendum to a single subject. California Constitution Article II, section 8(d) The purpose of the single subject rule is to avoid voter confusion and subversion of the electorate's will. *Shea Homes L.P. v. County of Alameda*, 110 Cal. App. 4<sup>th</sup> 1246, (2003) An initiative does not violate the single subject requirement if all of its parts are reasonably germane to each other and to the general purpose or object of the initiative. *Raven v. Deukmejian*, 52 Cal. 3d 336, 346 (1990)

The stated purpose of the VADP initiative is to require voter approval of any proposed development of a parcel of land or adjacent parcels of land taken together that contain 25,000 square feet or more which include certain specified changes to the

underlying zone. In essence, the initiative focuses on large projects within the City commercial zone. This is confirmed by the statements in the Notice of Intent to Circulate Petition, which focuses on and continually refers to “large scale development project.” However, the initiative is overly broad and arguably violates the single subject rule because it includes provisions that go beyond and may not be reasonably germane to that stated goal.

The VADP initiative proposes to amend the Community Plan by eliminating the goals of consideration of mixed use commercial land uses within the commercial area adjacent to Stratford Court and within other areas of the commercially zoned downtown area. This amendment is not limited to large projects as defined in the initiative and bears no reasonable relationship to the initiative’s purpose of subjecting large projects to a public vote. Further, this amendment is in direct contravention of the electorate’s desire to explore mixed residential commercial land uses within commercially zoned lands with the City, as exemplified by the voter approved Community Plan. This amendment is overbroad in its application in that it would have a general effect and would not be limited to large projects which is the focus of the initiative.

The initiative also seeks to require voter approval of amendments to the North Commercial and Professional Commercial zones which would allow residential uses. Again, these amendments affect the entire underlying zones and are not limited to the large projects which are the focus of the initiative and, as such, may violate the single subject rule.

## **7. Impacts on Existing Specific Plans**

There are three specific plans<sup>5</sup> which have been adopted by the City and approved by public vote pursuant to Chapter 30.54 of the Del Mar Municipal Code (“Measure B”). Each of the Specific Plans contain custom development standards and amendment procedures. Specific Plans are also required to be consistent with the General Plan. The VADP creates some ambiguity as to the status of the existing specific plans. Section 7 of the VADP states that the provisions of the initiative shall prevail over and supercede all provisions of the municipal code, ordinances, resolutions and administrative policies of the City which conflict with the provisions of the initiative. The initiative does not provide an exemption for vested rights. The specific plans were all adopted by ordinances. Should the initiative pass there will be some uncertainty as to how whether the rights under the specific plans will be impacted by any conflicting provisions of the VADP Initiative.

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<sup>5</sup> The Del Mar Plaza, L’Auberge Hotel and Garden del Mar

## PLANNING ANALYSIS

### **8. Fiscal Impact (current process)**

Preparation of a ballot measure for November 2016 would require approximately 80-100 hours of staff time, as well as the services of the City's legal counsel. Associated work items would include efforts such as preparation of ballot measure language, coordination with the Registrar of Voters on all associated logistical requirements, responding to media and public inquiries about the measure. The direct cost (not including labor) associated with the Initiative could range from approximately \$8,000 to \$60,000 depending on the election process. This process is supported by the General Fund. Any funds from the General Fund to cover the cost of regulating and processing the Initiative would reduce the funds available for other City operations and programs.

### **9. Other Fiscal Impacts (future):**

The Initiative proponents seek to adopt amendments to the City's Community (General) Plan, Zoning Ordinance and to the Land Use Plan (LUP) and Implementing Ordinances (IO) of the City's Local Coastal Program (LCP). The proposed amendments would require voter approval prior to a discretionary permit being issued for proposed land development in any commercial zone (Residential Commercial, Central Commercial, Beach Commercial, North Commercial, Professional Commercial, or Visitor Commercial Zones) that are 25,000 square feet or larger, allow a density bonus or require a specific plan, a change in zoning and/or land use designation, or an increase of the building height limit, floor area ratio or lot coverage from that of the existing underlying zone as of March 15, 2016.

It is anticipated that the City would require the applicant to pay for the costs of an election associated with private development. Depending upon the nature and timing of the election, the costs of conducting an election can be significant. Local Del Mar elections consolidated with the county and other local agency elections at a state general election are generally the least expensive to process, and recent election costs are typically approximately \$8,000 - \$15,000 according to the City Clerk. Special elections conducted by the City at times when the election cannot be consolidated with elections by other agencies, are significantly more costly, and range from \$35,000-\$60,000 according to information from the San Diego County Registrar of Voters. It is anticipated that additional staff time including legal counsel would also be required to process any changes and/or amendments associated with these types of actions.

Under the Initiative, the Community Plan would be amended to delete goals to explore mixed residential commercial land uses within the commercial area adjacent to Stratford Court and allow mixed residential commercial land uses within other areas of the commercially zoned downtown area. The Housing Element would also be revised to require voter approval for: a zone code amendment and associated actions to assign a new land use designation for two North Commercial Zone vacant properties, as well

as any other changes to those properties that would require or allow a change to the zoning code, specific plan, density bonus or increase in floor area ratio, lot coverage or building height; zone code amendments to the North Commercial and Professional Commercial Zones development standards to increase allowable residential density; any change to the land use and zoning policies of qualifying parcels in the North Commercial and Professional Commercial Zones from the underlying zone permitted as of March 15, 2016.

The Initiative, as proposed, would significantly delay or prevent the City from complying with its rezoning requirements as outlined within the Housing Element. This would put the City out of compliance with the State Housing requirements resulting in additional costs to the City of Del Mar (i.e., penalties, new plan, additional requirements, and/or loss of grants as well as threat of lawsuits). The City relies on various City programs, developer incentives and other land use amendments proposed within its Housing Element to meet its current Regional Housing Needs Allocation. The Initiative could potentially impact the ability for the City to receive future valuable State and Federal Grants.

The Initiative also has the potential to influence the City's ability to attract and retain business and employment as well as development within the commercial areas of the City. Redevelopment of only three (3) sites within Del Mar has occurred since 1986 when Measure B was adopted, of which one has not been completed. Although it has not been analyzed, it is anticipated that the Initiative would affect improving the commercial areas within the City, and sales revenue.

## **10. Consistency with the City's Planning and Zoning**

This section of the Report addresses the Initiative's effects on the internal consistency of the City's Community Plan, Zoning Code, and Local Coastal Program as follows:

- A. The City of Del Mar Community Plan (General Plan)
- B. The City of Del Mar Zoning Code and Measure B
- C. The City of Del Mar Local Coastal Program

### **A. Del Mar Community (General) Plan**

**Process:** The Del Mar Community Plan (the City's General Plan under California law) is comprised of the following five elements: 1) Environmental Management; 2) Transportation; 3) Recreation; 4) Community Development; and 5) Housing. Of these five, the Initiative is potentially inconsistent with two of the following elements, the Community Development Element and the Housing Element.

**Community Development Element:** The purpose and intent of this section is to address the form and character, as well as land uses and densities, for the future development of Del Mar, including addressing neighborhood concerns about

compatibility of new development, land uses, and ongoing development of cohesive neighborhoods. The proposed Initiative prohibits any modifications to the provisions of the Initiative that could address neighborhood level compatibility issues, unless said modifications are approved by a vote of Del Mar citizens.

The Initiative would enact the following amendments to Goals 3, 4 and 6 (shown as underlined or strike out):

**Goal 3. *Preserve and Enhance Del Mar's Special Residential Character and Small Town Atmosphere with its Harmonious Blending of Buildings and Landscape in Proximity to a Beautiful Shoreline.***

**C. *Adopt positive Controls to Prevent Future commercial Development, which is incompatible with the Existing Residential Character of the Community.***

1. Strengthen height controls to protect the transition from commercial to residential development. Permitted structure height in any commercial zone for developments of parcels of land, or adjacent parcels of land taken together, of 25,000 square feet or more shall be increased only when the voters of Del Mar approve such increase.

2. The floor area ratio and lot coverage allowed in the commercial zone for developments of parcels of land, or adjacent parcels of land taken together, of 25,000 square feet or more shall be increased only when the voters of Del Mar approve such increase.

3. No general plan amendment, community plan amendment, local coastal program amendment, specific plan, planned development, zone change, tentative subdivision map or other discretionary land use decision shall be adopted which would increase the residential density permitted by law; or increase the structure height, floor area ratio, or lot coverage permitted by law on property in the commercial zone for developments of parcels of land or adjacent parcels of land taken together of 25,000 square feet or more unless and until such action is approved by ordinance adopted by the voters of the City of Del Mar at a special or general election.

**D. *Maintain Architectural Design and Low Mass Intensity Scale within the Downtown Area that is in keeping with the traditional character of the Community.***

5. Limit the height, floor area ratio and lot coverage of structure of parcels of land, or adjacent parcels of land taken together, totaling 25,000 square feet or more in commercial zones to the current permitted height, floor area ratio and lot coverage. No increase in permitted height, floor area ratio or lot coverage for development of parcels of land, or adjacent parcels of land taken together, totaling 25,000 square feet or more in commercial zones shall be allowed unless approved by a majority of the voters in Del Mar at a special or general election.

**Outcome:** The proposed Initiative prohibits any modifications, as specifically outlined within the Initiative, that could raise neighborhood compatibility issues, unless said modifications are approved by a vote of Del Mar citizens. As a result, those projects placed on the ballot for approval by the electorate may approve or reject a project and/or specific plan for any reason and without any explanation. In other words,

whether the electorate approves or rejects a project and/or specific plan, the electorate does not have to provide any written findings or analysis supporting its decision, as is currently provided in the City of Del Mar's development review process. There would not be any alternatives provided in achieving the original goals set out in the plan for design, size and scale of projects.

The City Council may not exercise its administrative authority to grant final approval to any project site over 25,000 square feet unless and until the project has been approved by the electorate. The City's current process for review of development proposals allows a comprehensive analysis, review of the criteria associated with a density increase or increases to structure height, floor area ratio and lot coverage. Under this process, staff, decision makers, and the public review and work with private development applicants through a discretionary process involving noticing requirements and/or hearing process. The Design Review Board (DRB), Planning Commission and City Council, consisting of members of the community, provide an opportunity for the public and property owners to resolve and address design issues and/or concerns. The Municipal Code and Community Plan already provides for the Design Review regulations, the community process and recommendations that regulates how the citizens of Del Mar would like projects designed.

**Goal 4.**

***Insure that the Downtown Area Is Well-Integrated Into The Residential Fabric of The Community.***

*(Initiative would delete the following goals as is shown in strike-out)*

~~3. Explore mixed residential-commercial land uses within the commercial area that is adjacent to Stratford Court.~~

~~4. Allow mixed residential-commercial land uses within other areas of the commercially zoned downtown area.~~

**Outcome:** This item is focusing primarily upon the amendment process that would eliminate the mixed use designation within the village sites in the Community Plan that require changes to adopted densities and other development policies. As community plans are updated and amended, staff analyzes proposals to ensure that proposed densities are supporting policies of the Community Plan including its Housing Element. This action proposes to eliminate a land use recommendation without providing an analysis of impacts, and/or alternatives.

The Community Plan contains many references between land use elements and community recommendations. It also acknowledges that community plans may need to be updated or amended to be consistent with the goals and policies, especially as it relates to the designation and development within the village sites. The integrity of the Community Plan is heavily predicated upon the process that the City normally follows to allow revisions to these documents. To that end, the City Council included specific direction within the Community Plan's Introduction regarding this topic. The review and development of the Community Plan is a reflection of the input made by the overall community. "To be effective, the Community Plan must reflect broadly-based attitudes of Del Mar residents consistent with sound environmental, economic, social and legal

constraints. It is a statement of city policy as to the future of the community and is to be used as a point of reference for all official and administrative decisions....Furthermore, it is intended that this Community Plan be the document which sets forth the guidelines under which all development takes place...Proposals to change the Plan should be most carefully considered due to inherent physical, social, and economic interrelationships.” (CP-Introduction, page 1)

**Goal 6.**

**Assure Continuing Public Participation in City Planning...**

**Specific Recommendations**

*Specific Planning Areas*

*(new wording from Initiative underlined)*

*Specific Plans can be adopted by Ordinance or Resolution subject to public hearings and review by the Planning Commission and City Council. Any Specific Plan or any development of a parcel of land, or adjacent parcels of land taken together, of 25,000 square feet or more with any commercial designation or in any commercial zone as of March 15, 2016 shall not be approved unless approved by a majority of voters in Del Mar at a special or general election. Specific Plans are generally used for areas of the City, which demand specific planning attention that cannot otherwise be provided through conventional zoning procedures.*

**Outcome:** Specific plans are used for the systematic implementation of the Community Plan for all or part of an area covered by the Community Plan. Among other things a specific plan must contain standards and criteria by which development will proceed, and a program of implementation and regulation programs including siting of buildings, uses and roadways, height, size and setback limitation, building, densities and open space allocation. The Specific Plan is a process that includes public participation, and addressing any concerns during the process. Additional time, review and costs will be added to projects within certain areas where currently a ballot initiative would not be required. The previously approved Specific Plans would now be subject to the Initiative, and future Amendments.

## **Housing Element**

The Housing Element Law (Govt. Code Section 65580), mandates that local government adequately plan to meet the existing and projecting housing needs of all economic segments of the community. The Housing Element Law also acknowledges that, in order for the private market to address housing needs and demand, local governments must adopt land use plans and regulatory systems that provide opportunities for and do not unduly constrain housing development. Therefore, the Housing Element Law mandates that local governments update their housing elements periodically, and requires the California Department of Housing and Community Development (HCD) to review local housing element updates for compliance with State Law. Del Mar’s Housing Element was adopted by City Council on May 20, 2013 and certified by the California Department of Housing and Community Development on June 6, 2013. The City is actively working on meeting the Goals and Objectives of the Plan.

The proposed Initiative would amend the Housing Element to require approval by a majority of the voters in the City of Del Mar for rezones or increases in density, including sites that have been identified for affordable housing. This is inconsistent with the Community Development Element of the Community Plan, which cites as an overall objective and policy: “Preserve existing and ensure adequate housing for diverse age and socio economic groups within the community.” (Goal 3D,CDE). The Housing Element has furthermore identified housing needs and constraints with specific objectives and time frames for implementation of the Program. The proposed initiative would potentially conflict with the adopted Housing Element in several ways.

First, the Initiative would constrain implementation of the adopted Housing Element, which requires the City to implement the basic range of residential housing types, the densities, and the overall number of housing units planned necessary to accommodate the City’s share of the RHNA. Because it would increase the maximum allowable number of residential units that may be constructed on any parcel, the Initiative would require voter approval for these sites of 25,000 square feet or more. If any future amendments and/or projects identified for affordable house were not approved under the electorate process, it would result in an inconsistency with the Housing Element.

Secondly, the Initiative would constrain implementation of the Housing Element, which requires the City’s Zoning Code to conform to the State Density Bonus Law (Government Code Section 65915). State law supersedes local law, therefore the proposed Initiative cannot require voter approval for State mandated density bonuses. In addition, the City’s Housing Element and State law each require the City’s ordinance to conform to the State by requiring voter approval for State-mandate density for projects. Because updating the City’s Density Bonus Ordinance to conform to the State Density Bonus Law would increase the allowable number of residential units would require voter approval if the Initiative were to become law. The voters’ determination not to approve such an amendment and/or proposal would result in an inconsistency between the Zoning Code and both the City’s Housing Element and the State Density Bonus Law.

If the Initiative is passed, it does not relieve the City of its obligations to comply with State General Plan Housing Element Law mandates. The local initiative cannot supersede State Law. The City must identify adequate sites on the General Plan land use map with appropriate zoning and with services and facilities to accommodate the project housing needs and to satisfy the requirements of State Law. In addition, density bonus provisions are also outlined under State Government Code Section 65915, and the local initiative cannot supersede as well. Without an adopted housing plan, the City would be in violation of State Law, and the City would be vulnerable to litigation, losing land use control, housing obligations continue to grow, and ineligibility for a variety of regional and state grants, infrastructure and public amenity improvements funds.

Attachment 1 provides a detailed analysis from the City’s Housing Consultant that more specifically addresses inconsistencies and issues/concerns regarding the proposed initiative.

## **B. Zoning Code and Measure B**

Del Mar's Municipal Code Chapter 30.54 ("Measure B") was approved by the electorate of the City of Del Mar in 1986. It requires that any proposal for a large commercial development in the City's Central Commercial Zone (downtown area), on a lot, or adjoining lots in the same ownership or control, larger than 25,000 square feet, or proposing 11,500 square feet or more of development or redevelopment, be subject to the preparation of a Specific Plan. In addition, **Measure B** requires that if approved by the City Council, the Specific Plan also be subject to approval by Del Mar voters. Unless the required Specific Plan is approved by the voters, no development permits may be issued for construction of a project on the property. Measure B applies to the Central Commercial zone of the City (Attachment 2 -Map outlining commercial areas within Measure B).

City-wide Zoning Code standards are generally written to apply to a broad range of situations and are usually intended to regulate typical development proposals. The Measure B requirements for a Specific Plan supersede standards otherwise required by the Zoning Code. This allows unique development standards for the specific development proposal. In accordance with current requirements, the City has approved three (3) Specific Plans (Hotel Specific Plan, Plaza Specific Plan, and The Garden Specific Plan). Each of these Specific Plans utilizes developments that are different than the citywide Zoning Code development standards (including height, allowed floor area and setbacks) due to the overall public benefit provided as part of the project. These Specific Plans were adopted by a vote of the people in accordance with the Del Mar Municipal Code, Chapter 30.54. The new initiative would supersede the existing regulations, and would require voter approval for any amendment of a Planning Policy Document that increases the maximum allowable commercial or retail square footage. This could be potentially inconsistent with Measure B, which provides that the City may establish separate development standards in a specific plan approved by the City Council.

The proposed Initiative includes areas outside of the Central Commercial areas where the goals and objectives for development were intended to rely on City-wide zoning and the implementing policies. Some of these areas have also been identified within the Housing Element for affordable housing. Decision-makers for the City review and approve discretionary projects within these areas for compliance with design review requirements, zoning regulations, hazards including floodway areas, environmental protection, coastal resources, and variances and conditional uses as applicable.

The Initiative would include all areas of City's commercial including outside of the Central Commercial – downtown area as outlined within Attachment 2. The Initiative, as described, would require that qualifying development would require a vote of the people in addition to the process already in place. The Initiative would result in lengthy processing time and requirements, and eliminating commercial zones; which is

inconsistent with the Community Plan and zoning documents and without proper analysis, community input and participation.

### **C. Local Coastal Program (LCP)**

The Land Use Plan (LUP) is a component of the City's LCP and contains the provisions of the Community Plan Land Use Element including designations for residential and commercial uses. The LCP also includes Implementing Ordinances (IO) which implements the provisions of the LUP. Any proposed changes to the IO including development regulations, land use changes and other verbiage would require an LCP amendment. LCP amendments require review and certification by the California Coastal Commission before it could become effective. If the Initiative is approved by the voters, an LCP amendment would have to be prepared by the City for Coastal Commission action. If the Coastal Commission determines not to certify the requested amendment, it would not take effect. If the Coastal Commission requested suggested modifications of substance to the Initiative, it would require another confirming election to incorporate the modifications into the Initiative language. The revised language would require review and certification by the Coastal Commission before becoming effective.

Any future amendments associated with projects, would be subject to a ballot initiative, and Coastal Commission review and certification. The requirement to conduct a confirming election of an Amendment would add additional delay to the time required for processing that land use or development proposal. A special election in approximately four months after taking a formal action to call for the special election may occur at a significantly higher cost. General elections occur on a set schedule and infrequently. The additional delay that the voter approval requirement would add to the land use approval process for applications that include Amendments may have a significant financial impact on the feasibility of the project, especially when the applicant is a private party.

### **11. Uses of Vacant Parcels of Land**

The Initiative would impose an absolute voter approval requirement for land use and zoning amendments to increase the maximum number of residential units or commercial on any parcel. These requirements increase entitlement processing delays and the cost of obtaining entitlements, and may preclude land use and zoning amendments to increase the allowable numbers of residential units or commercial square footage on parcel. These restriction, cost and requirements may inhibit the development of residential and non-residential uses on vacant lands in Del Mar.

## **12. Environmental Review**

Voter Initiative is exempt from requirements of the California Environmental Quality Act (CEQA). Any future amendments may be subject to CEQA review.

## **13. Summary**

As explained in detail in the remainder of this Report, if passed by the voters of Del Mar, the Initiative would have a number of impacts on City land use regulations and approvals, and the City's ability to comply with State housing laws. The following list is a summary of the principal impacts of the proposed Initiative:

1. Notwithstanding the text of the Initiative, the effective date of the Initiative will depend on its unconditional certification by the California Coastal Commission. Since the proposed Initiative will amend portions of the Del Mar Community Plan (General Plan) and Zoning Code that comprise the City's Local Coastal Program (LCP) Land Use Program (LUP), the Initiative must be unconditionally certified by the Coastal Commission before it can take effect as to property situated in the California Coastal Zone. Therefore, the Initiative would not take effect unless and until the Coastal Commission unconditionally certifies it since the entire City lies within the Coastal Zone.
2. The Initiative's voter approval requirements would conflict with the City's adopted Housing Element and create difficulty for the City to comply with the requirement for State-mandated housing element updates for the current and future planning periods. This could render the City's Housing Element noncompliant with the Housing Element Law and potentially render the City's Community Plan internally inconsistent and in violation of State Law.
3. The Initiative's voter approval requirement would impede the availability and location of housing, and make more difficult the City's required efforts to satisfy its share of the Regional Housing Needs Assessment (RHNA). Failure to accommodate the RHNA is a violation of State law, which could subject the City to litigation and result in a court order suspending the City's land use regulating authority and mandating certain types of land use and housing approvals.
4. The Initiative would conflict with the City's statutory duties under Government Code Sections 65913.1 (Least Code Zoning) and 65915 (Density Bonus). Violations of these laws could subject the City to litigation. However, it is worth noting that State Law would supersede the Initiative. Thus the Initiative cannot (require voter approval for State-mandated density bonuses and/or (2) absolutely restrict zoning for density bonus when doing so would have the effect of physically precluding the development of a housing development at

the densities or the concessions or incentives provided by the State Density Bonus Law.

5. By requiring voter approval of certain land use changes, the Initiative could significantly increase the cost to the City or property owners of processing land use entitlements or amending the City's Community Plan (General Plan) or Zoning Code.
6. The Initiative's voter approval requirements would likely impede the use of land in Del Mar for its highest and best use, and would inhibit the development of vacant land and private development of already improved land.
7. To the extent that the Initiative inhibits or impedes new development of vacant land and private redevelopment of already improved land, the Initiative may adversely impact the ability to attract and retain businesses and employment sources in Del Mar
8. The proposed Initiative could render the City's Community Plan internally inconsistent in violation of State law; these inconsistencies could subject the City to litigation that might result in a court order suspending the City's land use regulatory authority and mandating certain types of land use and housing approvals including the Initiative's voter approval requirement for resignation of certain sites; and new regulations (process) would render the City's Community Plan internally inconsistent, in violation of State Law.
9. The Initiative would cause significant fiscal impacts to both the city and to applicants in improving and developing properties within the commercial areas of the City.