



The Woodpecker's mission is to inform Del Mar residents on what is going on in our community. We strive for factually based articles about significant issues that impact residents and we publish when a worthy issue confronts our city.

We always encourage residents to be involved and voice their opinions to our City Council.

## MANAGED RETREAT CONCERNS ARE BACK

### October 16th City Council Meeting: Agenda Item #6

Remember Managed Retreat? Well it appears to be back.

Residents breathed a sigh of relief in 2018 when the City Council unanimously adopted Ordinance 2018-72 which rejected Managed Retreat. However, a new ADU ordinance once again introduces Managed Retreat as a possibility.

On October 16th, the City Council will discuss new Accessory Dwelling Unit (ADU) regulations. It may not sound like the new ADU Regulations are related to Managed Retreat... but read on.

Note: The link to the Council Packet for 10/16/23 is: <https://www.delmar.ca.us/AgendaCenter/ViewFile/Agenda/10162023-3315> . Page 2 provides direction as to how to participate in the discussion. Item #6 begins on page 67 of 360.

**Managed Retreat** - the purposeful, coordinated movement of people and buildings away from risks. This may involve the movement of a person, infrastructure, (e.g. building or road), or community. It can occur in response to a variety of hazards such as flood, wildfire, or drought.

(Source: Wikipedia)

There is good news & bad news about the proposed ADU regulations.

**The good news** – new ADU regulations will address a number of issues and the changing character of Del Mar brought about by ADUs.

The bad news – the new ADU regulations includes provisions related to the Flood Plain Area (which includes the Beach Colony) that require homeowners to give up important rights, agree to serious obligations, and agree that their “development” may forcibly be removed or relocated.

You read that correctly, the proposed ADU ordinance says if a “Building Official” (not clearly defined who that is as we could not find a definition in the Zoning Code) determines that your ADU is unsafe for occupancy due to flood hazard conditions, your “development” (whatever that means as we could not find a definition in the Zoning Code) may be removed.

NOTE: The ADU ordinance is a proposed ordinance. However, what is worse is in March 2022 City Council Members Worden, Gasterland and Druker (Martinez and Quirk were recused from voting) actually adopted an ordinance with virtually identical language for the North Commercial District rezoning. (Ordinance 30.24.030) **So it appears Managed Retreat is already in effect for part of Del Mar.**

**Some excerpts from new proposed ADU ordinance that are of critical importance to Del Mar homeowners.**

### Sections 30.91.030(I) and 30.91.040(D)5

Prior to issuance of a 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.**

### Section 30.91.040(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:**

2. The landowner **shall record a notice on the property and notice all occupants that:**

- a. **The development is located in the Floodplain Overlay Zone** (2019 FEMA FIRM or its latest version), which applies to flood prone properties that are subject to periodic inundation due to flooding, including projected sea level rise; and
- b. **The property owner and all successors in interest waive any rights under Coastal Act Section 30235 and related LCP policies to hard shoreline armoring to protect the development and indemnify the City** from any claims related to property damage or personal injury.

3. Where necessary to ensure coastal resource protection and compliance with the Coastal Act based on the site-specific context, the notice required per Section 30.91.040(X)(2) shall also reflect the following:

- a. That sea level rise and flooding could render it difficult or impossible to provide services to the site.

- b. **That the boundary between public land (tidelands) and private and may shift with rising seas and the development approval does not permit encroachment onto public trust land.**
- c. That additional adaptation strategies may be required in the future to address sea level rise and flooding consistent with the Coastal Act and certified LCP.

4. The permittee (person getting the Coastal Development Permit) shall acknowledge as a condition of permit approval that while the approved **development meets all current flood safety requirements applicable at the time of approval, the development may, in the future, be required to be removed or relocated in accordance with the certified LCP, or by updates to FEMA mapping modeling, if the Building Official determines the development becomes unsafe for occupancy due to flood hazard conditions.** (Parenthesis Added)

It is clear is that the City Council formally rejected Managed Retreat when it unanimously adopted City Ordinance 2018-72. That Ordinance states in part that the City Council is committed to preserving Del Mar's existing Adaptation Plan and to rejecting any Adaption Plan or Local Coastal Program Amendments that conflicts with "**...the City's rejection of managed retreat as a local adaptation strategy...**" (City Ordinance 2018-72).

**City Staff believes** the proposed Ordinance does not include Managed Retreat in violation of Ordinance 2018-72:

”

*The proposed ADU Ordinance/LCPA does not include any provision requiring “managed retreat” and is consistent with City Council Resolution 2018-72 (adopted October 1, 2018) confirming the City’s rejection of “managed retreat” as an adaptation strategy in Del Mar.” (City Staff Report, October 16, 2023 p. 9)*

*The proposed Ordinance does not require “managed retreat”. The proposed Ordinance includes standards for special flood hazard areas. These provisions are existing requirements in the City’s certified LCP that already apply to proposed development, including primary dwelling units and ADUs, in the Floodplain Overlay Zone.” (City Staff Report, October 16, 2023 p. 13)*

Former members of STAC (Sea Level Technical Advisory Committee), who for years evaluated and ultimately recommended against Managed Retreat, as well as other residents disagree with the City Staff Report and feel the **proposed ADU ordinance DOES reintroduce Managed Retreat** and conflicts with the 2018 ordinance. There are hundreds of residential lots and existing homes located in Federal Emergency Management Agency (FEMA) flood management zones. **For these properties, the proposed ADU ordinance does the following:**

- Waives shoreline protection
- Explicitly accepts FEMA map modeling - effectively mandating Managed Retreat via removal of houses based on mere FEMA models

- and not realize or actual events.
- Provides 3 concrete mechanisms for forced removal of structures in Del Mar.

**Inserting the proposed language into the ADU ordinance about “development removal or relocation” DOES introduce Managed Retreat once again.** Residents could potentially lose their “development”, a broad term that pertains to ADUs but does not stop there.

If the City Council intends to honor their commitment to opposing Managed Retreat then this language needs to clearly state that and not allow a “back door” approach. Such unclear language could raise concerns with new buyers, title companies, appraisers, lenders, and insurance companies. *The uncertainty will lead to lower values and create issues with selling and refinancing properties and will surely bring expensive litigation that could be avoided with clarification of the language and terminology in the proposed ADU ordinance.*



**The proposed ordinance affects all of Del Mar and the City Council needs to hear from the residents.**

Please show up to the City Council meeting on Monday, October 16th at 4:30 PM or write a letter or email to be heard.

Letters or emails must be received by 12:00 noon on Monday, October 16th.

Give us your feedback at [info@forwarddelmar.com](mailto:info@forwarddelmar.com)



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