

Del Mar City Council Special Meeting Agenda

Del Mar Town Hall
1050 Camino del Mar, Del Mar, California

March 20, 2023 City Council Special Meeting

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A Cautionary Tale about the CVPP

By Ken Olson 3/16/23

This may be useful only as a cautionary tale. One property owner has received these 10 speculative CVPP citations based on speculative complaints.

Citation		CVPP Violation	Status	Considerations
A	March 2019	8.C.	City's findings were overruled by superior court in Sept. 2022. The court also cited 2 instances of the City's improper reading of the CVPP and six instances of the Council exceeding its authority . The court found the property owner guilty of having maintained 4 open space trees mistakenly planted in 1982, 12 years before he bought the property, even though the CVPP forbids removal.	Property owner maintains that the proposed RAP is not legally sound. City must vacate resolution 2019-55 in public meetings. City must deal with its false statements to the court regarding 8.D. Open issue: How is a nonnative tree unlawful in the Open Space?
B	March 2019	8.D.		
C	March 2019	Public nuisance	The public nuisance citation seems absurd under California law.	The \$200 fine has been paid. Property owner feels abused.
D	March 2022	8.C.	Property owner reluctantly removed the legal hedge under City's order and warning of impending \$1000/day fines.	8.C. and public nuisance citations are not yet closed in City records. The \$700 fine has been paid. This amount is in excess of that allowed by the DMMC. Property owner feels abused.
E	March 2022	8.D.	Charge withdrawn by City during discussion before hearing officer.	
F	March 2022	Public nuisance	The public nuisance citation seems absurd under California law.	
G	Feb. 2023	8.C.	The city misreads the CVPP.	Citation is being contested. The \$2000 fine has been paid. This amount is in excess of that allowed by the DMMC. Property owner feels abused.
H	Feb. 2023	Public nuisance	The tree was not planted .	
I	March 2023	8.C.	According to the court's ruling in Sept. 2022 there is no height violation .	
K	March 2023	Public nuisance	Did anybody ever inform the Code Enforcement Officer of the court's 9/22 statements about 8.C.? The public nuisance citation seems absurd under California law.	

Fines and fees imposed by the City total \$2900 in fines plus fees of \$_____.



A homeowner's views on 2 CVPP zoning ordinances

By Ken Olson 3/18/23

1. Regarding paragraph 8.C. text from 1980 CVPP

Landscape limitations shall insure that no tree is planted which, upon maturity, would exceed five feet (5') above the maximum roof elevation allowed on that lot, except for the Torrey Pine tree.

Purpose of this ordinance text per the City in 2023: "**to preserve view corridors.**" City interpretation in 2019: In Resolution 2019-55, the City Council allows trees and hedges provided they remain below the height limit and preserve the view corridors

Purpose of ordinance per Property owner: "**to preserve view corridors.**" Purpose is not to prevent planting. This would place undue burdens on residents, malcontent neighbors, code enforcement staff, and city government.

Superior Court judge, August 2022 (paraphrased here): **Landscape area trees cannot exceed height limit. If they do, it's a code violation. If they don't, it's not.**

Note that this code section allows a tree to impinge on the view corridors if it preexisted the CVPP or if it was naturally seeded -- not planted. Such incursions are contradictory to the required preservation of view corridors and likely would be handled under the TSV regulations.

Note that on Lot 9 portions of the raw land are at higher elevations than the tree height limit. So a one-foot tall tree there is a code violation.

2. Regarding paragraph 8.D. text from 1980 CVPP

Open Space Area. All private land outside the building and landscape limits (shown on the precise architectural plan) shall remain undeveloped for all time as an open space overlay district. Said district shall be composed of the property owners within the Carmel Valley Precise Plan district. Said owners will be responsible to preserve and protect said lands from fire and excessive erosion and vandalism as required. Access to said lands shall be limited to the drainage and street easements shown on the Precise Plan. Landscaping shall be limited to an informal planting of native plants normally found in the coastal scrub zone. Irrigation shall be limited to drip irrigation. No signs, fences or other structures shall be allowed, except as may be required for drainage and erosion control. Trails shall be limited to the maintenance access areas as shown on the Precise Plan.

Purpose of this ordinance text per City of Del Mar: To protect and preserve the open space. The property owner agrees.

Questions and comments by property owner: What is an open space overlay district composed of the property owners? Has it ever existed? Do we need to create it? Are the property owners jointly responsible for protecting and preserving the open space or is each property owner responsible for protecting and preserving one lot?

The ordinance limits landscaping in the Open Space to native plants and irrigation. How does this limitation get **interpreted as outlawing nonnative plants that are propagated by winds and birds**? The text limits landscaping activity, not natural processes.